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The litigation in Indiana involving railroad rates and particularly what is known as "three cent fare" on street railways has assumed an interesting phase, in view of the conflict between federal and State courts which has resulted. Some weeks ago United States Judge Showalter, at Indianapolis, in the case of Central Trust Co. v. Citizens' Street Railway Co., held unconstitutional the so-called Hugg law enacted by the legislature of Indiana, which reduced the fare on street cars from five cents to three cents. The legislation was attacked on the ground that the charter of the railroads was embodied in the act of 1861, as amended and in force up to March, 1897, and that that charter could not be amended in the manner proposed by the act, which, as affecting railroads, was special legislation, forbidden under a section of the constitution forbidding the passage of such laws under the circumstances. Judge Showalter held that the act was invalid, as involving special legislation of the kind forbidden by the organic law of the State. The act, he said, was confined to cities having more than 100,000 inhabitants at the last preceding United States census, and all the courts in the State judicially knew that Indianapolis was the only city in the State having the number of inhabitants specified, and no matter how many cities might, by subsequent increase of population, exceed in number the 100,000 mark, the act could not apply to them, because at the time of the passage of the law Indianapolis alone had the number mentioned. Judge Showalter accordingly granted an injunction restraining the city from enforcing the law.

Shortly after the decision of Judge Showalter the Supreme Court of Indiana, in the case of City of Indianapolis v. Navin, held that the act of the legislature fixing the street railroad fare in Indianapolis at three cents was constitutional. One ground for attacking the law of 1897 was that it was unconstitutional as imparing the obligation of a contract. The court said that no contract, the obligation of which was impaired by the act, had been pointed out. If, the court said, it was the contract under which the street railway companies took possession of the streets of Indianapolis and constructed tracks, it was sufficient to say that the city was not authorized to enter into any contract which would prevent the legislature from legislating upon the subject of fares. A section of the act of 1861 expressly reserved to the legislature the right to amend or repeal the act at its discretion. Furthermore, the court said, the right of the legislature to regulate fares upon street railroads organized under the act of 1861 did not depend upon the reservation of this right to amend or repeal, but the power would exist even if no such right had been reserved, and in order to exempt a common carrier from legislative control over its rates of fare, it must appear that the exemption was made in its charter by clear and unmistakable language inconsistent with the exercise of such power by the legislature. It was admitted that the right to regulate the fares on street railroads does not include the power to require a carriage of passengers without reward, or for such sum as would amount to confiscation or the taking of property without compensation or due process of law; but the court said that no facts alleged in either the complaint or reply showed that the act of 1897 by its necessary operation deprived any street railway company of its property without compensation or due process of law.

In regard to the contention that the amendment was a local and special act and therefore in conflict with a section of the constitution providing that corporations other than banking corporations should not be created by special act, much of the argument has a purely local bearing and need not be referred to here. Some of the considerations, however, adduced by the court in support of its decision are deserving of attention. The court, for example, laid down the rule that a law which applies to cities having a population of 100,000 or more when there is but one such city, but is so framed as to operate on all other cities in the State as they acquire the necessary population, is a general law because it operates upon all cities alike under the same circumstances. So the court said it is not necessary that a law concerning fares

to be collected by street railroad companies shall operate uniformly on all companies in the State, but only on all such companies under the same circumstances and conditions. It is just at this point that the conflict between the State and federal courts' decisions in reference to the Indiana law appears. The State Supreme Court says that the words "last preceding census" do not refer alone to the last census taken before the passage of the act, but that such words in a statute refer to the census last taken, whether before or after the passage of the act, unless the contrary appears in the act itself, so that although a city or town may not have the required population when the act was passed, yet it may in the future, and when any census taken after the passage of the act shows that the necessary population has been acquired, such city is governed by the provisions of the act. In other words, when a statute provides that all cities and towns of a named population, according to the last preceding United States census, shall be governed by the provisions of the act, then all cities or towns, as they acquire the requisite population, as shown by any census thereafter taken, will be governed by the act the same as if they had the required population as shown by the preceding census when the law was enacted. As will be seen by what has been said above in reference to Judge Showalter's decision, he took the contrary point of view in reference to this feature of the legislation under discussion. Thus, it will be seen, there is a clear conflict of opinion between the State and federal courts, on this question and under the injunction granted by the United States Court the city is restrained from enforcing the law which the State court has decided to be constitutional.

NOTES OF RECENT DECISIONS.

ATTORNEY AND CLIENT—CHAMPERTY.—In many parts of the United States, and probably in Maryland, and consequently in the District of Columbia, the ancient English statutes of champerty and maintenance have either never been adopted, or have become obsolete, so far as they prohibited all conveyances of land held adversely. 4 Kent, Comm. 447; Roberts v. Cooper, 20 How. 467; Schaferman v. O'Brien, 28 Md. 565; Matthews v. Hevner, 2 App. D. C. 343. But, according to the common law, as generally recognized in the United States, wherever it has not been modified by statute, an agreement by an attorney at law to prosecute at his own expense a suit to recover land in which he personally has and claims no title or interest, present or contingent, in consideration of receiving a certain proportion of what he may recover, is contrary to public policy, unlawful and void, as tending to stir up baseless litigation. 4 Kent, Comm. 447, note; McPherson v. Cox, 96 U. S. 404, 416; Stanton v. Haskin, 1 MacArthur, 558; Johnson v. Van Wyck, 4 App. D. C. 294; Brown v. Beauchamp, 5 T. B. Mon. 413; Belding v. Smythe, 138 Mass. 530; Stanley v. Jones, 7 Bing. 369, 377; *Id.* 5 Moore & P. 193, 206.

In Peck v. Heurich, 17 S. C. Rep. 927, recently decided by the Supreme Court of the United States, it was held that an agreement by an attorney at law to undertake the conduct of a litigation on his own account, to pay the costs and expenses thereof, and to receive as his compensation a portion of the proceeds of the thing recovered, is champertous and void, and that the intention that all costs and expenses of obtaining title and possession of lands conveyed to an attorney and another in trust for that purpose shall be borne by the attorney, and in no part by the grantors, is shown by the stipulation that he shall receive one-third of the proceeds "after paying all expenses, costs and expenditures of" the trustee in the execution of the trust "out of the same"—evidently meaning out of his third part. It was further held that a deed to an attorney and another in trust to enable them to obtain title and possession of the lands conveyed being void because the attorney was to conduct the necessary litigation at his own expense, and to have a part of the proceeds of the land recovered as compensation for his services, the trustee cannot maintain an action to recover the land, though the grantors might maintain a similar action in their own name.

CONSPIRACY—ASSOCIATION TO FIX PRICES—REFUSAL TO SELL GOODS TO DEBTORS.—Brewster v. Miller, 41 S. W. Rep. 301, decided by the Court of Appeals of Kentucky, presents a new phase of the question as to

the liabilities of associations among tradesmen for the purpose of fixing prices and controlling trade. It was held that the fact that an association was formed for the purpose of controlling or fixing the price of merchandise or property, in violation of Kentucky statutes, section 3915, gives no right of action against the association to one to whom it has refused to sell such merchandise or property. It was further held that an article of a funeral directors' association providing that the members are not to render services for or furnish burial material to any person who fails or refuses to discharge an existing indebtedness to any member of the association is not unlawful; that one has no right of action against a merchant for refusing to sell him goods, and that a conspiracy to compel one to pay a debt he does not owe gives him no right of action unless he pays the money demanded. The substance of the conclusion of this court may be stated in the language of Mr. Addison quoted with approval by the court to the effect that "a criminal proceeding, by way of indictment, lies for the mere act of conspiring; but a civil action is not maintainable unless plaintiff has been aggrieved or has sustained 'actual legal damage' by some overt act done in pursuance of the conspiracy." 2 Addison on Torts, § 850. The court also cites Heywood v. Tillson, 46 Amer. Rep. 373; Payne v. Railroad Co., 49 Amer. Rep. 666; Manufacturing Co. v. Hollis, 54 Minn. 225; Schulten v. Brewing Co., 96 Ky. 224, 28 S. W. Rep. 504; Carew v. Rutherford, 106 Mass. 1.

STATUTE OF FRAUDS — CONTRACTS TO BE PERFORMED WITHIN A YEAR.—In Eiserman v. Schneider, 37 Atl. Rep. 622, decided by the Supreme Court of New Jersey, it appeared that the defendant made an oral agreement, 20 years ago, that, in consideration of certain domestic services to be performed by the plaintiff, he would support and maintain her during her life-time. It was held that this contract was not within the statute of frauds, because it might have been fully performed and terminated by plaintiff's death within a year. As early as the case of Peter v. Compton (Skin. 353), the great majority of the judges declared "that where the agreement was to be performed upon a contingent, and it does not appear within the agreement that it is to be performed after the year, there a note in writing is not necessary, for the contingent might happen within a year; but where it appears by the whole tenor of the agreement that it is to be performed after a year, there a note is necessary; otherwise, not." This has been the generally accepted rule since that case was decided. Parol agreements to do something for an indefinite period, which may be terminated within a year, are valid. To be within the statute, it must be such an agreement as does not admit of performance according to its language and intention within a year from the time it is made. The following contracts by parol have been held to be enforceable, and not within the statute of frauds: To pay upon the death of a third person; to pay upon the termination of a suit; to pay on the day of the promisor's marriage, which was the case in Skin. 353; to marry upon restoration to health; to pay out of one's estate after death; to pay during life of promisee; to pay during coverture, King v. Hanna, 9 B. Mon. 369; Sword v. Keith, 31 Mich. 247; McConahey v. Griffey, 82 Iowa, 564, 48 N. W. Rep. 983; Hutchinson v. Hutchinson, 46 Me. 154; Blanchard v. Weeks, 34 Vt. 589; Burney v. Ball, 24 Ga. 505; Houghton v. Houghton, 14 Ind. 505; Blake v. Voigt, 134 N. Y. 69, 31 N. E. Rep. 256; Bull v. McCrea, 8 B. Mon. 423; Browne, Frauds (5th Ed.), secs. 272-276, and cases cited; Peter v. Compton, 1 Smith, Lead. Cas. *143; Howard v. Burgen, 4 Dana, 137. In Berry v. Doremus, 30 N. J. Law, 399, Mr. Justice Vredenburgh, in delivering the opinion of the court, said that the statute applies only to cases where neither side is to perform within one year, although the case did not necessarily turn upon that point.

EVIDENCE—OPINION EVIDENCE — MENTAL CONDITION.—In Clark v. Clark, 47 N. E. Rep. 510, it was held by the Supreme Judicial Court of Massachusetts, that an ordinary witness may be asked whether or not her sister, with whom she is and has been on terms of family intimacy, has "failed in her mental capacity during the past few years." The court said:

We have no desire in this case to depart from the rule early established, and often since recognized, that a witness who does not come within one of certain recognized classes cannot give an opinion as to

the soundness of mind of a person. In Poole v. Richardson, 3 Mass. 330, subscribing witnesses were allowed to testify as to the judgment they formed of the soundness of the testator's mind at the time of executing the will. See, also, Williams v. Spencer, 150 Mass. 346, 23 N. E. Rep. 105. "Other witnesses were allowed to testify to the appearance of the testator, and to any particular facts from which the state of his mind might be inferred, but not to testify merely their opinion or judgment." In Hathorn v. King, 8 Mass. 371, attending physicians were first allowed to give their opinion. See, also, Baxter v. Abbott, 9 Gray, 71; Hastings v. Rider, 99 Mass. 622. And in Lewis v. Mason, 109 Mass. 169, the opinion of a person who had been the family physician some years before was held to be admissible, although he had not attended the testator for some years. Experts in mental diseases are also allowed to give an opinion. May v. Bradlee, 127 Mass. 414, 421. These are well recognized exceptions to the general rule, but the rule itself is well established. Thus, in Com. v. Wilson, 1 Gray, 337, 339 (a case of homicide in which the defense was insanity), the defendant's counsel was not allowed to ask a witness, who had testified to the appearance and conversation of the defendant at certain interviews he had had with the defendant before the homicide, what opinion of the prisoner's mental condition he formed at the time. In Com. v. Rich, 14 Gray, 335, a physican, not an expert in mental diseases, was not allowed to give his opinion on a hypothetical case as to the sanity or insanity of the defendant. Nor was he allowed, although he knew the defendant to give his opinion as to whether he would be competent to apply the rules of right and wrong to any state of circumstances concerning which he was under high excitement, or in reference to which he was under the influence of an uncontrollable impulse. In Cowles v. Merchants, 140 Mass. 377, 5 N. E. Rep. 288, this question was asked: "If you have an opinion as to the mental condition of Erastus Cowles on August 28, 1894, founded upon facts and circumstances within your personal knowledge, state what that opinion is, and the facts and circumstances upon which it is founded." This was held rightly excluded. In Smith v. Smith, 157 Mass. 389, 32 N. E. Rep. 348, the general rule was followed, and this question to a witness was held inadmissible: "Whether, from the general appearance of the testator, he considered him capable of making a contract, or of transacting important business." See, also, Hubbel v. Bissell, 2 Allen, 196; Com. v. Fairbanks, 2 Allen, 511; Ashland v. Marlborough, 99 Mass. 47; May v. Bradlee, 127 Mass. 414, 421; Ellis v. Ellis, 133 Mass. 469; McConnell v. Wildes, 153 Mass. 490, 26 N. E. Rep. 1114.

It has, however, often been decided that a witness, although he does not come within one of the classes allowed to give an opinion, may testify to facts which are matters of common observation. Thus, in Com. v. Dorsey, 103 Mass. 412, (a case of homicide), the testimony of a witness, not an expert, was held admissible, that hairs on a club appeared to be human hairs, and resembled the hairs of the person murdered. So, in Parker v. Steamboat Co., 109 Mass. 449 (an action for personal injuries), the daughter of the plaintiff was allowed to testify: "The plaintiff is decidedly worse than she was two months after the accident. She is not able to do as much work as before." In Barker v. Comins, 110 Mass. 477 (a will case), these questions were allowed to be asked: "Did you notice any change in his intelligence or understanding?" "Did you notice any want of coherence in his remarks?" It is said by Mr. Justice Gray, in delivering the opinion of the court: "The questions to the witnesses produced at the trial were rightly admitted. They did not call for the expression of an opinion upon the question whether the testator was of sound or unsound mind, which the witnesses, not being either physicians or attesting witnesses, would not be competent to give. Hastings v. Rider, 99 Mass. 622, 625. The question whether there was an apparent change in a man's intelligence or understanding, or a want of coherence in his remarks, is a matter not of opinion, but of fact, as to which any witness who has had opportunity to observe may testify, in order to put before the court or jury the acts and conduct from which the degree of his mental capacity may be inferred." 110 Mass. 487. In Nash v. Hunt, 116 Mass. 237, 245, a witness was allowed to testify that, during a certain interview, "he observed no incoherence of thought in the testator, nor anything unusual or singular in respect to his mental condition." It was said by Mr. Justice Wells: "We do not understand this to be the giving of an opinion as to the condition of the mind itself, but only of its manifestations in conversation with the witness. So far as his mental condition was manifested to the witness by that interview, in conversation, looks or demeanor, he could properly state, as a matter of observation whether it was in the usual and natural manner or otherwise. 'Incoherence of thought' has reference to the ideas expressed or conveyed to the hearer, rather than to the condition of mind of the speaker. There is no essential difference between these answers and those allowed in Barker v. Comins, 110 Mass. 477;" 116 Mass. 251. In Com. v. Sturtivant, 117 Mass. 122 (a case of homicide), one question was whether a witness who was familiar with blood, and had examined with a lens a blood stain on a coat, when it was fresh, could also testify that the appearance then indicated the direction from which it came, and that it came from below upward, although he had never experimented with blood or other fluid in this respect. The evidence was held to be competent. The general question was much discussed by Mr. Justice Endicott, 117 Mass. 133-137. In Com. v. Brayman, 136 Mass. 438; the defendant was indicted, on Gen. St. ch. 161, sec. 59, for conveying a certain parcel of land knowing that an incumbrance existed thereon, without, before the consideration was paid, informing the grantee of the existence and nature of such incumbrance. At the time of the conveyance, the defendant was 69 years old, and the trial was 6 years after. He introduced evidence tending to show that his mind and memory were so enfeebled by age and infirmity as to render it probable that he had forgotten the prior incumbrance. One Bassett was asked "whether six years ago he had failed." This question was excluded, and for this reason a new trial was granted. Mr. Justice Colburn said: "We think that any witness of ordinary intelligence, who is familiarly acquainted with a person, may testify whether, within a given time, he has failed mentally or physically." See, also, Leistritz v. Zylonite Co., 154 Mass. 382, 28 N. E. Rep. 294; Connors v. Grilley, 155 Mass. 575, 30 N. E. Rep. 218; Laplante v. Cotton Mills, 165 Mass. 487, 43 N. E. Rep. 294.

No doubt, a question may be put in so ambiguous a form that the judge presiding at the trial would be justified in excluding it, as calling for an opinion as to the mental condition of the testator, or in requiring counsel to change its form. This was the ground upon which the court in Ellis v. Ellis, 133 Mass. 469, was of opinion that the exception to the exclusion of the question put in that case must be overruled. The

question which was excluded in the case at bar, we are of opinion, was admissible, within the rule laid down in Com. v. Brayman and the cases that preceded it.

PUNCTUATION—HOW CONSIDERED IN THE LAW.

OUTLINE OF SUBJECT.

I. Introduction
  1. Historical.
  2. Its importance and necessity.
  3. Question to be considered.

II. How considered in the law in relation to the language used.

1. In statutes:
  (a) In England
    1. Earlier custom.
    2. Change in recording.
    3. Differing cases.
  (b) In United States
    1. Cases disregarding it.
    2. Giving it some consideration.
    3. Relying upon it.
    4. Referring to original statutes and journals.
    5. Real force of punctuation in statutes.

2. In wills:
  (a) In England
    1. Early rule or not regarded.
    2. Later rule or considered.
    3. Original will referred to.
    4. Rules of punctuation not rules of law.
  (b) In United States
    1. Not controlling.
    2. Known grammatical rules, if followed, may prevail.

3. In other instruments:
  (a) Deeds.
  (b) Judge's charges.
  (c) Contracts.
  (d) Pleadings.

III. Reasons why not construed like words:
1. Formerly no punctuation in original document.
2. Appeals only to the eye and not to the ear.
3. Often the unauthorized work of clerk or printer.
4. Difficulty of disproof and liability to fraud and error.
5. Arbitrary in its meaning.
6. No certain, well known, fixed rules of punctuation.

IV. General result of the decisions.
1. Rules deducible from the facts. On the whole, harmonious.
2. Concluding remarks.

Punctuation—How Considered in the Law.—I. It seems that the people of ancient days, as far as may be learned from the inscriptions and writings of past centuries, for the written conveyance of thought, relied solely upon the words themselves, their position in the sentence and the meaning they expressed in the language. Punctuation found no place in written language to any extent up to about the beginning of the sixteenth century, though it had very slowly and gradually been taken up before that time. That it has come to be considered, in modern times, as an ingredient in the forms of written composition which, if not absolutely essential to an intelligible expression of the purpose and intention of the writer, at least in a high degree facilitates such expression, is beyond all question. That its absence may lead to endless confusion of meaning and even sometimes tend to express exactly the opposite thought to the one intended has often been adverted to. The attorney who, expatiating upon what he deemed the all important effect of the misplacement of a mere comma, quoted to the court the sentence, "The Lord is gracious never willing the destruction of men" (in which a comma after the word "never" has the very opposite effect to the placing of a comma before that word), forcibly presented the expediency, if nothing more, of punctuating properly.[1] But in what manner the courts of law have looked upon the various points of punctuation (which so often apparently decide the grammatical construction of the sentence) is another matter. Whether courts will regard these marks as a part of the language of the statute, or deed, or will, or contract, as much as any word in the instrument, and hence, according to the rule of law, construe the intent as expressed in the language used, if plain and unequivocal, before resorting to the context or to other means of ascertaining the intent of the writer, is the question here particularly to be considered.

II. 1. (*a*) It is well established that formerly, in England, punctuation was no part of the statute. As placed upon the original rolls of parliament no words were ever punctuated. The punctuation, therefore, that was inserted in the printed copies was not authoritative and was not even allowed to throw light upon the statutes. Since 1849, however, the records of the statutes were printed with marks of punctuation, but, nevertheless, the question is not decided in England as to whether punctuation can be regarded as a part of the statute, the cases not being perfectly harmonious on the question.[2] In Barrow v. Wadkin,[3] the question arose as to the meaning of words in a statute passed during the time when no punctuation was used in the original. The court there supplied marks, making the words, "aliens duties customs and impositions" read, "aliens' duties," etc. In Claydon v. Green,[4]

[1] Albright v. Payne, 1 N. E. Rep. 20; Com. v. Wright, 1 Cranch, 46.
[2] Endlich on Interp. of St. Sec. 61; Sutherland on Statutory Construction, Sec. 232.
[3] 24 Beav. 327 (1857).
[4] L. R. 3 C. P. 521 (1868).

where the question was as to a statute recorded with the marks of punctuation, Willes, J., would not regard either the marginal notes or the punctuation as part of the statute, treating the act as formerly when it was the custom to enter laws on the roll without any marks. But in Venour v. Sellon,[5] Jessel, M. R., declared that it followed as a consequence of the change in the method of recording the acts that they now included, as part of them, the marginal notes. In King v. Milverton,[6] Denman, C. J., declared the same thing.

(*b*) In the United States, also, the courts do not appear to be uniform in their declarations of the rule on this branch of the subject. In Cushing v. Worrick,[7] it was held that punctuation is no part of a statute. The court there applied a construction to a statute which entirely disregarded the presence or absence of a comma, and held that a limiting clause is to be restrained to the last antecedent unless the subject-matter required a different construction. In Hamilton v. Steamboat,[8] it was said, that in order to get at the real meaning of the law makers, the court would disregard the punctuation or repunctuate. In Gyger's Estate,[9] it was asserted that there is no punctuation in a statute which ought to rule. The court changed the pointing so that the act left no doubt on the mind. In Shriedley v. State of Ohio,[10] it was the clear intent of the law to cover a broader field than the punctuation limited it to, and the court said the pointing or lack of it may be disregarded. In Hammock v. Loan, etc. Co.,[11] it was asserted that punctuation is no part of a statute even though the comma in question, if left as it was, would give the section a broader scope than it would otherwise have. In that case though the statute read that a judge in vacation shall have power "to hear and determine motions, to dissolve injunctions," etc., it was held that only motions to dissolve injunctions could be heard and determined. The purpose and contemplated scope of the statute was relied on and punctuation disregarded in Martin v. Gleason.[12] Other cases in the United States, though not relying upon punctuation as much as upon the words, still do not go to the extreme of saying that punctuation is no part of a statute or that it is always disregarded. In Pancoast v. Ruffin,[13] a comma which conveyed a meaning to the act inconsistent with "the reason, the justice, and the spirit of the act," was omitted by the court. The punctuation was not allowed to change or control the intention of the legislature where that intention is otherwise clearly expressed. If the punctuation tends to render parts of the act ineffectual, the statute must be construed without it. Also in Com. v. Shopps,[14] it is held that if to follow the grammatical result of the punctuation would necessarily lead to the rendering useless and null any word or part of the statute, the punctuation should not be followed, if retaining the word is not repugnant to the general legislative intent. Also in Randolph v. Bayne,[15] to the effect that punctuation will not be permitted to render the statute absurd. In United States v. Rossvally,[16] quotation marks in the act, which conveyed a meaning inconsistent with the apparent intent, were disregarded. In United States v. Isham,[17] a comma had to be changed to a hyphen in order to avoid repugnancy between the words of the statute. The context plainly corrected what was merely an error in punctuation. A thoroughly considered case was Albright v. Payne.[18] A comma was there removed from its place after a word in the printed statute and placed before the word, to conform to legislative intent. Though there asserted that marks of punctuation do not control, it was admitted that they may aid in arriving at the meaning. This seems better than the rule that they be disregarded entirely. They should have their place in discovering the intent. In United States v. Lacher,[19] the changing of a comma to a semicolon made the intent clear. Not to have done so would have made null a certain clause and have stated a crime without providing any punishment for it. Fuller,

[5] 2 Ch. D. 525 (1876).
[6] 5 A. & E. 854 (1836).
[7] 9 Grey, 385 (1857).
[8] 16 Ohio St. (N. S.) 432 (1866).
[9] 65 Pa. St. 311 (1870).
[10] 23 Ohio St. 139 (1872).
[11] 105 U. S. 84 (1881).
[12] 139 Mass. 183 (1885); and see McDermott v. Louisville, 62 S. W. Rep. 264 (1896).
[13] 1 & 2 Ohio, 177 (1821).
[14] 1 Woodw. (Pa.) 129 (1863).
[15] 44 Cal. 369 (1872).
[16] 3 Ben. 157 (1869).
[17] 17 Wall. 496 (1873).
[18] 1 N. E. Rep. (Ohio), 20 (1885).
[19] 134 U. S. 628 (1889).

Ch. J., said that courts, to get at the true meaning, will read with such stops as are manifestly required. In still other American cases more reliance has been placed in the pointing of the law. Punctuation, though not decisive as printed, served to indicate what the intent was.[20] The original act of the legislature may be referred to for the purpose of inspecting the punctuation to obtain aid in construing the statute.[21] The case that perhaps states the most accurate rule in regard to punctuation in statutes, and which discriminates nicely between the extreme views, is that of Caston v. Brock.[22] It is there said: "Punctuation is the least reliable guide to the sense of a statute, but cannot properly be said to be without any force. In itself it is ordinarily insufficient to fix the sense of a statute where that is disputable, especially where the question is one of the force of a comma; but when the punctuation is strictly consistent with one of two senses, equally grammatical, and inconsistent with the other, it should be allowed the force of opening the question of construction to receiving aid from the context, and from the nature of the purpose the statute has in view. It is certainly competent to cancel the equally weak argument that arises from the relative position in the sentence of the two clauses." In that case a comma between two clauses made it possible that they were meant to be independent of each other, and that was a sufficient warrant for going to the context for the proper solution of the question.

2. (*a*) Coming now to the consideration of the legal view of punctuation in wills, and first taking up the English cases, we find the early rule to be as stated by Lord St. Leonards in Heron v. Stokes:[23] "In wills and deeds you do not ordinarily find any stops; but the court reads them as if they were properly punctuated."[24] In the other cases, however, the courts are uniform (with the exception of one early case) in giving consideration to punctuation in construing wills. The English judges have come to a somewhat more liberal view on this subject in regard to these instruments, and certainly a more uniform one, than they have as to statutes. The one exceptional case here referred to is that of Sanford v. Raikes.[25] There Sir William Grant refused to resort to the original will to be aided by the manner in which it was punctuated. He said that the sense is not to be collected from the punctuation but from the words and the context. It was there contended that a parenthesis, enclosing certain words, afforded an inference that testator did not mean those words to be imperative. This case stands alone and is superseded by the better doctrine that the court will look at the punctuation for aid. A somewhat similar case in its facts is Morrall v. Sutton.[26] There the fact that the marks of parenthesis enclosed certain words, was considered, and accorded the meaning that the words enclosed were intended to be independent of what followed. It seems to the writer that this case is not in fact as much at variance with Sanford v. Raikes as might appear from the words of the court. In the earlier case a perhaps unwarranted and unusual meaning was contended for and imputed to the parenthesis, while in Morrall v. Sutton the general and usual meaning was ascribed to it—that it separates the clause from the rest of the sentence. The decision on the facts should probably have gone the same

[20] United States v. Three R. R. Cars, 1 Abb. (U. S.) 210 (1868). There the mere absence of a comma before the qualifying phrase, "as aforesaid," was sufficient to make the words apply only to the last antecedent. The presence of the comma would, the court said, have made the opposite conclusion necessary. This was stated still more broadly in Squires' Case, 12 Abb. Pr. (N. Y.) 43 (1861). On the basis that where there is more than one antecedent to a limiting phrase, a comma is always placed immediately before the phrase, in sentences correctly constructed, the court there decided that the presence of the comma precluded the contention that the phrase was really meant to apply only to the last antecedent. The court declared that "punctuation often determines the meaning of a sentence as much as any other characteristic of it." The converse appeared in the case of Cummings v. The Akron, etc. Co., 6 Blatchf. (U. S.) 511 (1869), where the grammatical effect of the punctuation in separating two phrases was abided by.

[21] McPhail v. Gerry, 55 Vt. 174 (1882). There the act, as printed, had no comma before the limiting words in question, but the comma appeared in the original act. The construction without the comma would have been an unnatural one and without reason, and the punctuation in the original act, though not necessary, probably, to decide the court, greatly aided it in discovering the intention. The journals of the legislature may also be referred to to get at the intent of the lawmakers, where a statute is ambiguous in meaning. Edgar v. The Board, etc., 70 Ind. 331 (1880).

[22] 14 S. C. 104 (1880).

[23] 2 Dr. & War. 98 (1842).

[24] Bouvier Dict. "Punctuation."

[25] 1 Mer. 650 (1816).

[26] 1 Phill. 533 (1844).

way even had Sir William Grant been willing to consider punctuation, though he was wrong, seemingly, in stating a rule that refused to regard punctuation in any case. His words as to this are called mere *dicta* by Beach on Wills,[27] and by Hawkins on Wills.[28] In Compton v. Bloxham,[29] the original will was referred to and the question was decided on the ground that certain words began a new sentence. In a note to 9 Hare, 802,[30] it is stated that where a question arises on the punctuation of the will or other mark indicating where a sentence or clause was intended to begin, and which might affect its sense, the original will may be referred to after the will had been probated, even though the question relates to personal estate. This reference to the original will could not be made to ascertain words merely. In Gauntlet v. Carter,[31] the introduction of a comma before a word was deemed a circumstance of importance in showing that the word did not modify the preceding word but stood alone and independent of it. The fact that two bequests to the same person were made in successive sentences, in the second of which the words "for life" were added, seemed to decide the court in Gower v. Towers,[32] that the legatee took the first bequest absolutely. Had they been stated in one sentence, it was said, there would have been no doubt that the words applied to both bequests. Considerable force was given to a comma and to the fact that both bequests were written in one sentence in the case of Child v. Ellsworth,[33] to show that the time of payment mentioned applied to both legacies. The fact that the clause grammatically referred to both antecedents was even regarded sufficient to overcome the presumption of payment of pecuniary legacies within one year from testator's death. The court refers to Lord Ellenborough and says, "this is rather a question for a grammarian than a lawyer and which a schoolmaster might decide as well as a judge." This last remark seems to be going altogether too far, according to the great weight of all the decisions, for grammatical rules are by no means considered a corporate part of rules of law. As far as the office of punctuation marks may be supposed to be understood by the one using them (or, perhaps, commonly understood) the rules concerning the use of such marks may be applied in construing the instrument; but it would be a strange doctrine to say that ignorance of grammatical rules is no excuse. Even in this case the court reasoned that it must have been testator's intention to have both legacies payable at the time mentioned, for to every other bequest in the will a time of payment had been expressly added. It is very likely that a schoolmaster could not have discovered this intention as well as the worthy judge and that the judge, though deciding correctly, stated his rule too broadly.

(*b*) The leading American cases, as to punctuation in wills, all happen to decide for the construction opposed to that conveyed by the punctuation, but the courts by no means reject punctuation as means of interpretation. They do not, however, seem to go as far in allowing punctuation to control as the English will cases—at least in the statement of their rules, in which the American courts are much more guarded on this subject. Where, if the punctuation in question be removed, the meaning is clear and plain and the only ambiguity which exists is that created by the punctuation itself it will not be resorted to, to construe the meaning, although it may perhaps be resorted to when no other means can be found to solve an ambiguity.[34] In a recent case in Maryland, Black v. Herring,[35] the mere omission of a comma was passed upon and it was held it could not affect the obvious sense. Were it otherwise, the court said "it would, we think, be giving to a mere matter of punctuation a controlling force in the construction of wills never yet, so far as we are aware, sanctioned or recognized in any authoritative statement

[27] Sec. 325, n. 4 (1888 ed).
[28] 7 (2d Am. ed. 1885).
[29] 2 Coll. 201 (1845).
[30] Referring to Oppenheim v. Henry, 18th Jan. 1853.
[31] 17 Beav. 586 (1853).
[32] 26 Beav. 8 (1858).
[33] 2 DeG. & M. 679 (1852).

[34] Arcularius v. Sweet, 25 Barb. 405 (1857); Weatherly v. Mister, 39 Md. 629 (1873). In the first of these cases the intent of the testator as construed from the context, the plain meaning of the words and the legal construction in favor of the vesting of estates—was given full effect before considering the punctuation to elucidate such intent. It was also stated that punctuation would not overturn the natural meaning of the written words, whether taken by themselves or in connection with the whole instrument.
[35] 28 Atl. Rep. 1063 (1894).

of the law." In Dew v. Kuehn,[36] Taylor, J., seems to place more reliance upon correct grammatical construction than most of the cases. In that case the testator failed to punctuate according to any known rule, and as the language itself was not very plain in meaning the court had to give such a construction to the words as would evidently carry out the intent of the testator, resorting to other clauses of the will and to the circumstances surrounding testator. Had the court been able to determine that certain points were the beginning and end of a sentence the plain grammatical sense thereby conveyed by the will itself would have prevailed.

3. In regard to punctuation in deeds it must first be said that one of the same reasons why it was not regarded in old English acts of parliament and in the early wills applies also to deeds, viz., that there were formerly no "stops" to be found in them.[37] Even though they were used, says Washburne, "they are not regarded in the construction or meaning of the instrument."[38] In Doe v. Martin,[39] the court changed the punctuation so as to make the limiting words, "his heirs forever," apply to all the preceding words and not only to the immediately preceding, as the punctuation indicated. This was done to give effect to the whole. In *Re* Denny's Estate,[40] the court said: "Where the meaning of a clause in an instrument is doubtful, the court may insert punctuation as a means of showing what construction the words are capable of; and if by such aid the court is enabled to see that the language can bear an interpretation which will make the whole instrument rational and self-consistent, it is bound to adopt that interpretation in preference to another which would attribute to the parties an intention utterly capricious, insensible and absurd." In Bunn v. Wells,[41] it was held that the intention of the parties controls unless in conflict with some rule of law and that in the construction of deeds no regard is had to punctuation. In that case the grantor had his warranty and *habendum* clauses confused but the words, "unto his heirs and assigns" were held to refer to both clauses, since there could be no reason in following the punctuation and giving but a life estate while warranting the title to bargainee and his heirs. In regard to other instruments the earliest case in this country and the one perhaps most often cited is Ewing v. Burnet.[42] The question there arose out of a judge's charge to the jury. In his statement of what acts constituted adverse possession the judge made use of several separate sentences. But it was held that the sentences following the main one were obviously meant to be merely cumulative and not to legally state separate and independent grounds, though grammatically independent sentences. "Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail; but the court will first take the instrument by its four corners in order to ascertain its true meaning. If that is apparent on judicially inspecting it, the punctuation will not be suffered to change it." In White v. Smith,[43] a contract lacked proper punctuation. This, it was held, is no more allowable in vitiating the contract than bad grammar, the rule against which is a maxim of the law. (*Mala grammatica non vitiat chartam*). The obligor could not punctuate in *mitiori sensu* when it was sought to enforce his obligation. The meaning must be found in the words; while punctuation is only an aid in ascertaining the true reading without which the production may be read and interpreted. In English v. McNair,[44] a badly punctuated writing was repunctuated by the court. In Osborn v. Farwell,[45] the court construed a qualifying clause to apply to two sentences, notwithstanding the clause in question appeared in the second sentence only. "Punctuation in written contracts may sometimes shed light upon the meaning of the parties but it must never be allowed to overturn what seems the plain meaning of the whole contract." This may seem slightly at variance with Mr. Justice Taylor's words in Dew v. Kuehn,[46] but it is to be remembered that in the Wisconsin case the court said the meaning of the words of the will was not plain while the opposite was clearly the case

[36] 64 Wis. 293 (1885).
[37] 16 Can. L. J. 182 (1880); Heron v. Stokes, 2 Dr. & War. 98; Doe v. Martin, 4 Term R. 65.
[38] 3 Washb. R. P. 628.
[39] 4 Term R. 65 (1790).
[40] 8 Ir. R. Eq. 427 (1874).
[41] 94 N. C. 67 (1886).
[42] 11 Pet. 41 (1837).
[43] 33 Pa. St. 186; 75 A. D. 589 (1859).
[44] 34 Ala. 40 (1859).
[45] 87 Ill. 89 (1877).
[46] 64 Wis. 293.

here. Besides, though it was not commented upon in this case, the same remark made by Judge Taylor that it is not positively known what rule the punctuation follows, applies here. A semicolon was used here before the qualifying clause and that mark might have been supposed to have the same force as a period in making what follows independent of what immediately precedes it. An interesting question came up in Com. v. Wright,[47] as to whether quotation marks in an indictment for libel sufficiently stated that the words enclosed were the very words used by defendant. It was held that they did not sufficiently express this, because indictments being read to the prisoner, it is essential that actual words be used to express every essential averment. It was also a question in the mind of the court whether quotation marks are generally understood to import a perfect accuracy of quotation.

III. It is now to be considered more particularly than heretofore what are the various reasons which have been and are operating to place punctuation in a subordinate position as a means of interpretation. In summing up these reasons it is to be noticed, first, that there were formerly no "stops" either in statutes, deeds or wills. It is stated by Joshua Williams in his first book on Conveyancing that not a single stop is to be found in properly drawn deeds, "for no one would wish the title to his estate to depend on the insertion of a comma or semicolon. The absence of stops renders it next to impossible to alter the deed, without the forgery being discovered."[48] By the time that legal instruments and acts of parliament came to be pointed punctuation had no favor among the courts and never could attain a much higher position than it had before. This policy of the law, if it may be so termed, is to be observed in the legal advertisements for next of kin, in Great Britain, which are peculiar for their entire lack of punctuation.[49]

Secondly, there is the additional reason furnished by the fact that such instruments especially, as statutes, indictments and judges' charges, are heard read in the first instance and hence they appeal to the ear alone and not to the eye. Even where printed copies of bills are furnished to legislators the words are still given the most attention, for in the reading of the bill by the clerk it is very likely that errors in the printed punctuation will not be easily detected. As to an indictment the practice is to read it in arraigning the prisoner and then to receive his plea. His knowledge of the charge ordinarily being derived only from what he has heard, it would be most unjust to hold him to account for mere punctuation marks, which are addressed only to the eye, and some of which, like quotation marks and apostrophes, are not even to be perceived in the hearing by any halt of the voice. The same is true of a judge's charge. The jury takes the law as it sounds from the mouth of the judge and does not note the manner in which he has punctuated it in the written charge. Though this reason may not apply so strongly to some other instruments like deeds or ordinary contracts, yet it may often be that even those instruments are only heard read and then signed.[50]

Thirdly, there is the fact that punctuation is often unauthorized. It is frequently, in the case of statutes, left to the clerk or the printer. It cannot be certainly known who placed the mark where it is. The clerk's or printer's punctuation is therefore an uncertain guide to the interpretation, the marks being frequently used in an exceedingly capricious and novel way.[51]

Fourthly, even where the marks are placed there by the parties themselves there is the difficulty of proof or disproof, the liability to error and to fraud, and the danger that would result from any rule holding the writing to the punctuation as it appeared in court. No estates or rights ought to depend on the insertion or omission of a comma or semicolon. Handwriting may be proved, but it is impossible, generally, to prove what hand placed such slight marks as dots and dashes into the writing. In pleadings it would be especially embarrassing to require a strict rule as to punctuation and many a guilty criminal might escape if a mere cleri-

[47] 1 Cush. 46 (1848).

[48] 16 Can. L. J. 182.

[49] Art. in Chic. L. J. Jan. 1895; Sutherland on Stat. Const., § 232; Endlich on Interp. of Stats., § 61; Leake Contr., p. 227; Heron v. Stokes, 2 Dr. & War. 98; Doe v. Martin, 4 T. R. 65.

[50] Sutherland Stat. Constr. Sec. 232; Com. v. Wright, 1 Cush. 46; Ewing v. Burnet, 11 Pet. 41.

[51] Morrill v. The State, 38 Wis. 434; Lawson R. R. & Pr. Vol. 7, sec. 3773; State v. McNally, 34 Me. 210; 56 Am. Dec. 653; Com. v. Shopp, 1 Woodw. (Pa.) 129

cal error in the printing were sufficient to vitiate an indictment.[52]

Fifthly, punctuation is arbitrary. We can rarely see the errors in it and at the same time be able to draw out the meaning of the writer, as might be done where words are misspelled. It can scarcely be discovered in what regard the writer misunderstands the use of punctuation, as might be done in other mistakes of grammar. It must either be taken at its correct meaning or rejected, and hence, on account of the difficulty of finding an intermediate point where the punctuation may be received from the standpoint of the one who used it, it is so often disregarded entirely. Lastly, the rules of punctuation are not so fixed and certain that a mark is always construed to convey the same meaning. On this account, largely, as well as for other reasons great ignorance generally prevails as to the meaning of the marks. In Weatherly v. Mister,[53] the dispute was centered not so much on the question whether punctuation should be considered or not, but on the point whether a semicolon has the same force and effect as a period. To say, as remarked in Child v. Ellsworth,[54] that this is a question for a grammarian rather than a lawyer, when the wise grammarians themselves disagree, would be placing the ignorant layman, who dared to use punctuation, in a very precarious situation. Speaking of quotation marks in Com. v. Wright,[55] the court said: "We are far from being certain that these marks are generally understood to import a perfect accuracy of quotation. It would therefore be unwise to rely on that concerning whose meaning there is no clearly understood fixed standard." That this is one of the greatest objections to placing much reliance on punctuation and that when this objection is removed considerable weight may be given to the marks can be seen in Dew v. Kuehn.[56] Before resorting to any construction as to what might be the intention of the testator the court will stick to the will itself, if plain; and in that case had the court been able to tell whether or not the testator meant to form what are ordinarily called sentences the grammatical construction would have prevailed. "But from the want of any attempt to punctuate the writing according to any known rules of punctuation" the court could not determine whether testator meant to write a separate sentence or not, and so the punctuation marks used could not be given any force. Perhaps this phase of the subject cannot be summed up in better words than by quoting from Pollock, C. B., in Waugh v. Middleton.[57] "I doubt if it were laid down as a general rule, that the grammatical construction of a clause shall prevail over its legal meaning, whether a more certain rule would be arrived at, than if it were laid down that its legal meaning shall prevail over its grammatical construction. In my opinion grammatical and philological disputes, and indeed all that belongs to the history of language, is as obscure and leads to as many doubts and contentions as any questions of law, and I do not, therefore, feel sure that the rule, much as it has been commended, is on all occasions a sure and certain guide. It must, however, be conceded that where the grammatical construction is quite clear and manifest and without doubt, that construction ought to prevail unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document (and the same rule applies in the construction not only of an Act of Parliment, but of deeds, wills and of any subject of a like nature), that the apparent grammatical construction cannot be the true one, then that which upon the whole is the true meaning shall prevail in spite of the grammatical construction of a particular part of it."

IV. It may be said, in view of all the decisions on this subject, that the rules that can be extracted from the cases are on the whole harmonious. It is true that in some instances the courts have stated the rule too broadly or carelessly, but in almost every case of that kind the judge has not even followed his own rule to the extent of his statement. It is certainly not the law to-day that punctuation will not be considered, or that it is no part of the law, as some of the

[52] Arcularius v. Sweet, 25 Barb. 405; 3 Washb. R. P. 628; Com. v. Wright, 1 Cush. 46.
[53] 39 Md. 629.
[54] 2 DeG. & M. 679.
[55] 1 Cush. 46.
[56] 64 Wis. 293.
[57] 8 Exch. 356 (1853).

cases state. On the other hand it would also be too extreme a statement to say that punctuation is to be considered, in determining the meaning of a sentence, as much as any other characteristic of it.[58] Again, swinging back to the other side, it would not be correct to state that the relative position of words in a sentence will overturn the effect produced by the punctuation.[59] Punctuation has a position in law which is between these extreme statements. Of course intention—that great guide—is always to be kept in mind. But when words are plain and unequivocal an opposite intention cannot be shown extrinsically. So, when a certain grammatical construction is plain and clear, it cannot be overturned by merely showing any different intention from without the instrument itself. Punctuation, when its genuineness is unquestioned, seems by the decisions to at least take precedence to extrinsic evidence, when the meaning is ambiguous.[60] It must be noticed that there is a difference in the mode of considering writings which are merely badly punctuated or not pointed at all, and those which are in general well punctuated. It is a much easier matter for the court to disregard punctuation in the former case than in the latter. In some of the cases where the judges seem, in their statement of the rule, to give an undue force to punctuation, we find them actually deciding the case on the intention, which in reality was only aided by the punctuation. In other cases where the judges affect to give not the slighest notice to punctuation, they are really deciding that the significance urged for the punctuation in question is a strained and unreasonable one. Some of the judges are prone to rail at punctuation in general whenever they refuse to allow it to decide the case in question; others are inclined to elevate it in importance beyond its proper place whenever they find it chimes with the intention as they see it. Properly, punctuation has a position in the law, though a subordinate one. Being used in the instrument with intent to make the meaning plainer, it should certainly be considered in court to aid in discovering that meaning. The old disfavor with which judges formerly regarded punctuation is, no doubt, largely due to the fact that it was generally brought up to destroy or confuse the meaning. But that its work in aiding the intent is far greater and more extensive cannot be denied. Even that great bulwark of good government — our national constitution—was once subjected to the attacks of punctuation. Serious efforts were made to break down all the beneficent limitations upon congressional power. As was said in Arcularius v. Sweet,[61] the powers of the federal government depended on a comma; and parties divided on a semicolon. One side read in the constitution that congress should have power "to lay taxes to pay (that is, in order to pay) the debts and provide for the common defense and general welfare;" the other maintained that the powers were independent, "to lay taxes;" "to provide for the general welfare," etc. The semicolon interpretation was finally overthrown, and the written words and natural sense prevailed over the "stops," and it is now settled, both judicially and politically, that congress has no unlimited power, and that the general welfare clause is a mere qualification of the power to lay taxes. Grammarians may insist that punctuation is as much a part of a sentence as any word in it[62], but the law has not agreed to that proposition. Even illiterate people must be allowed to make contracts or other documents, and their meaning should not be distorted by the application to the writing of any standard rules, the existence of which they never were aware of. Richard A. Proctor terms these marks of punctuation, "humble soldiers." The name seems appropriate. They will obey an unskillful general as well as a capable one. When once the order is given, they proceed to execute it, whether for good or ill. "Theirs not to reason why." They may be used at improper times and in improper places. They may perform acts which lead to results exactly opposite to those the commanding general contemplated when he issued his orders. As well might we attempt to discover the plan of campaign from the effects of the movements of the army as to discover the intention of the writer of any instrument by the grammatical effect of the punctuation marks.

[58] Squires Case, 12 Abb. Pr. (N. Y.) 43.

[59] Cushing v. Worrick, 9 Gray, 385; Caston v. Brock, 14 S. C. 104.

[60] Ewing v. Burnet, 11 Pet. 41; Waugh v. Middleton, 8 Exch. 356.

[61] 25 Barb. 405.

[62] Kellogg's Rhetoric.

But since, in the large mass of writing that is done every hour of every day, there are myriads of actual cases, which never came to a law court, in which the "humble soldier" well and faithfully carries out the plans and intentions of his commanding officers, it would be an injustice to despise him. His services in defending the true thought and will of men are far more extensive than his attacks against them. That the punctuation mark should be recognized—not disregarded,—that its position as an aid to human intentions should be maintained in the proper place,—that though not allowed a controlling power, due consideration should be given to its probable effect,—will be, it is hoped, conceded as established in view of all the cases and authorities which have been collected and discussed herein.

CHARLES L. AARONS.

Milwaukee, Wis.

PARENT AND CHILD—INFANTS.

KELSEY v. GREEN.

Supreme Court of Errors of Connecticut, June 15, 1897.

1. G was appointed guardian of a minor by a court in Connecticut where the minor had his actual dwelling place for several years. K was afterwards appointed guardian of such ward by a proper court in another State, where the technical domicile of the minor's father was, on the father's application. Held that, in determining a contest between such guardians as to the custody of such minor, the court should consider the interests of the minor.

2. Even in contests between parents and third persons as to the custody of minor children, neither party has any right that can be allowed to militate against the welfare of the infants.

ANDREWS, C. J.: Two errors are insisted on: (1) That the judge erred in holding that the question of the interest of the minor could affect the right of the plaintiff to the custody of his ward; (2) that the judge erred in overruling the claims of the plaintiff that the appointment of the defendant as guardian was void for the reason that the court of probate in the district of Thompson had no jurisdiction to make the appointment.

Most of the argument which is made in behalf of the plaintiff seems to us to be misapplied. The contention here is not between the father, on the one hand, and a stranger, as guardian, on the other, but between two guardians, one appointed by a court at the place where the minor has had his actual dwelling place for six or eight years, and the other by a court at the place where it is said the technical domicile of the minor's father is. This writ, if granted, would not put the minor into the care and custody of his father, but into the hands of an utter stranger in fact, as well as in blood, who, although a fit man to be a guardian, can have no kindness or affection for the minor, nor for whom can the minor have any affection or good will. *Prima facie*, it is true, a father has the legal right to the custody of his minor child. But he has no absolute right, which he can at his own will transmit to another, to the detriment of the child. The plaintiff was appointed guardian of the person of Clarence Ward by a court in the State of New York on the application, as the record shows, of Ferdinand Ward, the father of Clarence. By that appointment, made on that application, it is very likely that the father has excluded himself from the right to claim the custody of his son. It is certain that the appointment of the plaintiff, made on that application, gains therefrom no added merit or force. The stress of the argument made here, that the parental relation ought to control, has nothing to rest upon. But were it otherwise, and the case was between the father and a guardian, we think the court did not err in considering the interest of the minor, in determining into whose hands he should be placed. "While it is the strict legal right of the parents, and those standing in *loco parentis*, to have the custody of their infant children, as against strangers, a court will not, on *habeas corpus*, regard this right as controlling, when to do so would imperil the personal safety, the morals, health, or happiness of the child in controversy. The right of the father or mother to the custody of their minor children is not an absolute right, to be accorded to them under all circumstances; for it may be denied to either of them if it appears to the court that the parent otherwise entitled to the right 'is unfit for the trust.' And, in contests between parents and third persons as to the custody by such parents, the opinion is now almost universal that neither of the parties has any right that can be allowed to militate against the welfare of the infant. The paramount consideration is, what is really demanded by its best interests? And the rule is ordinarily the same in contentions between parents for the possession of children. The court is not bound to award the custody to either contesting party in such controversies, but may, subject to the welfare and best interests of the child, award it to a third party. In contentions of this kind the child has the right the to protection of the court against such misfortunes of its parents, or the influences of such gross and immoral practices, as will seriously endanger its life, health, morals, or personal safety. But what measure of wickedness or profligacy on the part of the parent will be sufficient to warrant the court to deprive the parent of his natural right to the minor child must necessarily depend upon the facts and circumstances of each particular case." Church, Hab. Corp. § 440. Authorities to support the

rule thus expressed may be almost indefinitely cited. Thus, in Richards v. Collins, 45 N. J. Eq. 283, 17 Atl. Rep. 831, it is said: "In resolving the general question, what will best subserve the interest and happiness of the child? its own wish and choice may be consulted and given weight, if it be of an age and capacity to form a rational judgment. There is no fixed age which capacitates such choice. It depends upon the extent of the mental development. The wishes of children of sufficient capacity to form these are given especial consideration, when parents have for a long time voluntarily allowed their children to live in the family of others, and thus form home associations and ties of affection for those having their care and nurture, and when it would mar the happiness of the children to sever such ties. The relation of parent and child is regarded as not fully characterized by the relative duties of service and support. Nature's provision of mutual affection commonly exists as the incentive to parental and filial duty and the bond of family union. It is the instinct of childhood to attach itself and cling to those who perform towards it the parental office, and they become endeared to it by ministering to its dependence. A parent, by transplanting his offspring into another family, and surrendering all care of it for so long a time that its interests and affections all attach to the adopted home, may thereby seriously impair his right to have back its custody by judicial decree. In a controversy over its possession, its welfare will be the paramount consideration in controlling the discretion of the court. The strict right of the parent will be passed by, if a judgment in observance of such rights would substitute a worse for a better condition." In *Re* O'Neal, 3 Am. Law Rev. 578, Judge Hoar gave this opinion: "Suppose, by a pure misfortune, as insanity, or being cast away, a father has left his child destitute and dependent on charity, does this give the child the right to form new relations, such as to take from the father the right to the custody of the child? Upon the best reflection, I am satisfied that it does. When the father, by misfortune, is compelled to leave the child utterly helpless, the child ought to be considered as emancipated by the father. If the child has made new relations in life, so deep and strong as to change its whole nature and character, the father has no right to reclaim it. I am satisfied that this is a sound proposition. The child is not the father's property. It is a human being, and has rights of its own. The father has a right to the custody of his child, because from general experience, the natural and trained affections of the child to attach to the father, and those of the father to the child. If the father has left the child at an age too early for it to remember him, and it is placed in circumstances so that it must perish unless cared for, and other persons have expended money and become attached to the child, and the child has formed such associations as cannot be severed without injury to it, then the father has no right to sunder these ties. It is within the judicial duty of the court to determine that the assent of the father has been given to the arrangement, which cannot be terminated without injury to the child. This principle would apply under the same circumstances if the father became insane. A human being cannot be treated like a piece of property." "The father's right to the custody of his infant child is not absolute or unqualified. He may relinquish or forfeit it by contract, by his bad conduct, or by his misfortune in not being able to give it proper care and support. When a father has, through his fault or misfortune, lost or forfeited his right, and subsequently, by reformation or otherwise, reinstated himself in a position to properly care for and maintain his child, his right does not necessarily revive; but a court, upon *habeas corpus*, will exercise a sound discretion, in view of all the circumstances, with reference to the welfare of the child itself." State v. Bratton, 15 Am. Law Reg. (N. S.) 359. On a hearing of a *habeas corpus* relative to the possession of a child, the question is one of discretion, and the further question whether the father is the proper person to have the care of it is legitimate. Johnson v. Terry, 34 Conn. 262; Wood v. Chapsky, 26 Kan. 650; Mercein v. People, 25 Wend. 64; Verser v. Ford, 37 Ark. 27; 9 Am. & Eng. Enc. Law, p. 243; Prime v. Foot, 63 N. H. 52; *In re* Goldsworthy, 2 Q. B. Div. 75.

The court of probate in Thompson had jurisdiction to appoint a guardian to Clarence Ward. His actual stated residence was in that district. The statute (Gen. St. §§ 458, 459) uses the word "resides" in this sense, rather than in the sense of strict technical domicile. Denslow v. Gunn, 67 Conn. 361, 35 Atl. Rep. 264. In other sections of our statutes, generally the word "reside" is used in a sense which includes all who are the actual, stated dwellers, in any given place, even though they may have a technical domicile elsewhere. Yale v. School Dist., 59 Conn. 489, 22 Atl. Rep. 295; Connecticut Hospital for Insane v. Town of Bridgewater, 68 Conn. —, 36 Atl. Rep. 1017. There is no error. The other judges concur.

NOTE.—In the choosing of a guardian the paramount question is, what are the child's best interests? This question should have more weight with a court than any other. It may mean the separation of parent and child. If the parent cannot for various reasons care for the child in a proper manner the separation should be made. In determining what are the child's best interests, questions of social position, moral training, and educational advantages are to be considered. A father cannot emancipate or give his child away so that he will be free from providing for its wants. Bennet v. Byrne, 2 Barb. Ch. 216; Compton v. Compton, 2 Gill, 241. If by misfortune the child has made new relations in life so deep and strong as to change its whole nature and character, the father has no right to claim it. 3 Am. Law. Rev. 578. The father is *prima facie* entitled to the custody of his children, and where he is of good character and able and willing to maintain them, his right is paramount. But the father's right is not absolute or un-

qualified. 15 Am. Law Reg. 359. Where a person has left his domicile with no intention of returning and is killed before he establishes another, the legal character of the old domicile does not necessarily control in matters of policy, and determine the place where a guardian for the decedent's infant child should be appointed. 42 Mich. 528. Courts will recognize the father as the child's natural guardian, and commit to him the custody of the child. But if it be shown that he is immoral, incompetent, intemperate or otherwise unfit, the court will exercise its discretion on *habeas corpus* in awarding the custody where it belongs. Taylor v. Jeter, 33 Ga. 105; People v. Mercein, 3 Hill (N. Y.), 399, 38 Am. Dec. 644; State v. Libbey, 44 N. H. 321, 82 Am. Dec. 223; Verser v. Ford, 37 Ark. 27; U. S. v. Green, 3 Mason (U. S.), 482; Bennet v. Bennet, 2 Beas. (N. J.) Eq. 114; Johnson v. Terry, 34 Conn. 259; Brinster v. Compton, 68 Ala. 299; State v. Richardson, 40 N. H. 272. Where a child has been committed to a public institution as prescribed by statute, the court will not on *habeas corpus* inquire into the proceedings resulting in such commitment. People v. N. Y. Juv. Asylum, 12 Abb. Pr. (N. Y.) 92. The father cannot divest himself of custody by an agreement with the mother (Johnson v. Terry, 34 Conn. 259; Hunt v. Hunt, 4 Greene [Iowa], 216; Cook v. Cook, 1 Barb. Ch. [N. Y.] 639; State v. Smith, 6 Greenl. [Me.] 462); nor can he, by any contract, deprive the mother of the custody of their child after the father's death. State v. Reuff, 29 W. Va. 751. A parent may relinquish or forfeit his right of custody to his child by desertion or abandonment, bad conduct, or being unable to afford it proper care and support. State v. Bratton, 15 Am. L. Reg. 359; Clark v. Bayer, 32 Ohio St. 299; Young v. State, 15 Ind. 480. Courts of law and courts of equity possess exactly the same power and discretion in respect to jurisdiction under the writ of *habeas corpus*. People v. Wilcox, 22 Barb. (N. Y.) 178; State v. Baird, 21 N. J. Eq. 384; People v. Mercein, 8 Paige (N. Y.), 46; People v. Porter, 1 Duer (N. Y.), 709. Chancery has a wide jurisdiction respecting the care and custody of infants which is not open to the courts of law. In England all guardians are appointed by a court of chancery, in the exercise of inferior or appellate powers. In the appointment of a guardian, two very important elements enter into the jurisdiction—possessing property and actual residence within judicial limits. In chancery practice property in the infant has usually been deemed essential. Glascott v. Warner, 20 Wis. 654; Herring v. Goodson, 43 Miss. 392. Where the ward is a non-resident the court in such cases, where property is situated, appoints some friend of minor, requiring property security. Clarke v. Cordes, 4 Allen, 466; Rice's Case, 42 Mich. 528; Neal v. Bartleson, 65 Tex. 478. Where courts of two or more counties have concurrent jurisdiction, the court where proceedings are first commenced retains jurisdiction. 67 Cal. 643. The infant's place of residence at the time when a guardian is to be appointed determines the jurisdiction of the court. Harding v. Weld, 128 Mass. 587; Brown v. Lynch, 2 Bradf. 214. The infant's place of residence at the time when a guardian is to be appointed determines the jurisdiction of the court. Harding v. Weld, 128 Mass. 587; Brown v. Lynch, 2 Bradf. 214. Statute jurisdiction is taken where minors are residents of the State at the time, even if the legal domicile be elsewhere. Ross v. Southwestern R. R., 53 Ga. 514; Schouler's Domestic Relations, par. 303, p. 482. The bringing of an infant into the State by stratagem for the purpose of securing jurisdiction in such is illegal. 82 N. Y. 90. In the appointment of a guardian by the court all parties interested should have an opportunity to be heard upon the petition. Underhill v. Dennis, 9 Paige, 202; Bowles v. Dixon, 32 Ark. 92.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMIRALTY JURISDICTION—Statutory Liens.—A State statute giving a right of suit *in rem* against a vessel wrongfully or negligently causing the death of any person (Code Va. § 2902) creates a lien, and may be enforced by a libel *in rem* in the federal courts, when the accident occurs in waters of the State navigable from the sea.—THE GLENDALE v. EVICH, U. S. C. C. of App., Fourth Circuit, 81 Fed. Rep. 633.

2. ADVERSE POSSESSION — Notice of Claim.—Where by mistake the line fence between two lots is put about four feet over the line on one lot, and the lots are thereafter occupied up to said fence by the respective parties, the statute of limitations will not begin to run to bar a recovery of said strip until the occupant makes some claim of ownership thereto beyond the naked possession, and notice of said claim is brought to the knowledge of the owner of the legal title thereto. —RASDELL v. SHUMWAY, Kan., 49 Pac. Rep. 631.

3. ADVERSE POSSESSION — Tacking.—In ejectment to recover certain land included in defendant's inclosure, it appeared that at the time defendant purchased her lot it was verbally agreed between her and her vendor that whatever right of possession vendor had in such strip should go with such lot, and that they had been

successive occupants thereof continuously for more than seven years, though defendant alone had been in possession less than such period: Held, that such verbal contract established such a privity of possession between defendant and her vendor as to entitle her to tack her predecessor's possession to her own so as to make a continuous adverse possession.—RAMBERT v. EDMONDSON, Tenn., 41 S. W. Rep. 935.

4. ASSIGNMENTS FOR CREDITORS.—A deed of assignment cannot be declared void by reason of matters dehors the instrument in a proceeding to which neither the assignee nor the beneficiaries are parties.—STATE v. WITHROW, Mo., 41 S. W. Rep. 980.

5. ASSOCIATIONS—Fund Reserved for Expenses.—Defendant employed L as agent to promote the sale of certain State bonds, agreeing to pay him one-third of any commission he might obtain. L formed with plaintiffs and others, a syndicate to purchase the bonds at par flat; it being agreed that two-thirds of six months' interest accrued should be set aside for syndicate expenses. L concealed his agency, and represented that he had no interest in the fund so reserved except as a member of the syndicate: Held that, the whole fund thus set aside belonging to the syndicate, on the failure of some of the members of the syndicate to claim an interest in such fund, defendant did not become entitled to what would have been theirs had they claimed it.—HAMBLETON v. RHIND, Md., 38 Atl. Rep. 40.

6. ASSUMPSIT — Necessary Parties.—Judgment for plaintiff cannot be sustained in an action by an administrator for the amount of intestate's life insurance in excess of what he owed defendant, it being agreed that it was assigned to defendant's wife; that, to the amount of the debt, it was collateral security therefor; and that the money was paid her by the insurance company,—and no claim being made to the balance by defendant, but it being claimed by him that intestate gave the balance to defendant's wife, and that he was merely holding it for her; she being a necessary party for the determination of the question of her right to retain it.—UEBERROTH v. UNANGST, Penn., 37 Atl. Rep. 935.

7. ATTACHMENT—Change of Residence.—A residence once shown to have been established is presumed to continue until it is clearly shown to have been abandoned. The residence of a man having a family, which he maintains, is *prima facie* where that family dwells. A man's acts and conduct are more to be considered, in determining the question of a change of residence, than any mere declaration of intent; and when the question of residence or non-residence is doubtful the question should be so determined as will best secure the rights of creditors and others having dealings with such party.—HATCH v. SMITH, Kan., 49 Pac. Rep. 698.

8. ATTACHMENT — Liability of Attaching Creditors.—Attaching creditors are not liable for the acts of a sheriff unless by interference in some way they make themselves liable. They are presumed to have intended that no action should be taken by the officer not authorized by the terms of the writ. And it is not error to grant a nonsuit, as to creditors who have been joined in a suit with the sheriff, when the record furnishes no evidence tending to show that the officer was authorized or directed by his codefendants, or either of them, to levy upon the particular goods in question, or any goods except such as belonged to the debtor. The receiving of the proceeds of the sale in satisfaction of their claims implies no consent to any irregularities or proceedings of the officer, and they are not joint wrongdoers with the sheriff.—MUNNS v. LOVELAND, Utah, 49 Pac. Rep. 743.

9. ATTACHMENT OF MORTGAGED PROPERTY.—A mortgagee in possession is the owner of the personal property described in the mortgage, as against an officer who takes the property under an attachment as the property of the mortgagor.—WILLIAMS v. MILLER, Kan., 49 Pac. Rep. 703.

10. BANKS AND BANKING — Special Deposits—Insolvency.—Money deposited in one bank to the account of another, with directions to the latter to pay the amount thereof by telegram to a third bank, is a specific deposit, which may be recovered in full, as against general creditors, where the bank to whose credit the money is deposited receives the same, but suspends before making payment as directed.—MONTAGU v. PACIFIC BANK, U. S. C. C., N. D. (Cal.), 81 Fed. Rep. 602.

11. BILLS AND NOTES—Consideration.—Mutual promises are no consideration for a note, where, when the maker gives it, the payee agrees, in consideration of receiving the amount thereof, to pay the maker annually for life a sum equal to 6 per cent. thereof, but no payments are made by either party.—IN RE SMITH'S ESTATE, Vt., 38 Atl. Rep. 66.

12. BILLS AND NOTES—Note of Married Woman.—A mortgage on the lands of the husband is held against husband and wife, and they unite in a note that pays off such incumbrance: Held, that such a contract was within the capacity a *feme covert*, as it was a benefit to her dower right, and that it was not affected by the fact that her husband acted as her agent, and th at she signed the note, and gave it to him without further knowledge or inquiry.—CREVIER v. BEBERDICK, N. J., 37 Atl. Rep. 959.

13. BILLS AND NOTES—Variance by Parol.—Where a note given by husband to wife, and payable one day after date, did not bear interest on its face, parol evidence was admissible to show whether the parties intended it to bear interest during the wife's life.—BEAVER v. SLEAR, Penn., 37 Atl. Rep. 991.

14. BONDS—Refunding Bonds—Bona Fide Purchasers.—Refunding bonds issued in compliance with the statute authorizing them, and which recite a compliance with its provisions, are valid in the hands of *bona fide* purchasers, though the original bonds were void and the funding transaction was a mere subterfuge to avoid that objection.—BROWN v. INGALLS TP., U. S. C. C., D. (Kan.), 81 Fed. Rep. 485.

15. BUILDING ASSOCIATIONS—Insolvency—Stockholders.—A by-law of a building and loan association provided that any member paying in full the face value of the shares at the time of subscription should be entitled to receive in cash, semi-annually, the full amount of all dividends declared thereon, and that such stock should be governed by the same rules, and be subject to the same liabilities, as other stock, except that no monthly installments were to be paid on account thereof: Held, that one who invested in such stock did not thereby become a creditor of the association, and entitled to a preference over holders of other stock.—HOHENSHELL v. HOME SAVINGS & LOAN ASSN., Mo., 41 S. W. Rep. 948.

16. CARRIERS — Passenger — Carrying Passenger beyond Station.—In an action to recover for carrying plaintiff's wife a short distance beyond the regular station in the nighttime, plaintiff can recover only for the inconvenience his wife suffered beyond that which she would have experienced in arriving at the station at that point.—HOUSTON, ETC. RY. CO. v. MCKENZIE, Tex., 41 S. W. Rep. 831.

17. CARRIERS—Passengers — Disorderly Conduct.—Where defendant railroad company permitted indecent and disorderly conduct on the part of passengers in a car in which plaintiff's wife was traveling, and failed to provide her with better accommodations, and she was thereby frightened, shocked, and made sick, defendant was liable in damages.—TEXAS & P. RY. CO. v. HUGHES, Tex., 41 S. W. Rep. 821.

18. CARRIERS—Passengers—Negligence.—In a suit for personal injuries suffered while plaintiff was attempting to alight from defendant's train, an instruction that if the jury believe "the employees in charge of the train negligen ly and carelessly failed to stop said train a suffi ient length of time to allow plaintiff to

leave the same in safety, and that by reason of said negligence, if any, the plaintiff was injured," they shall find for plaintiff, does not make the defendant company an insurer of the safety of the passenger in attempting to alight.—MISSOURI, K. & T. RY. CO. OF TEXAS v. MCELREE, Tex., 41 S. W. Rep. 848.

19. CARRIERS OF GOODS—Delivery — Negligence.—Where a bill of lading unconditionally directs the carrier to deliver the goods to the consignee named, the carrier is not guilty of negligence by doing so, without requiring the production of the bill of lading, so as to render it liable to the consignor for the goods, because he attached to the bill of lading a sight draft on the consignee, and sent it to a bank for collection, in the absence of notice to the carrier of such draft.—NEBRASKA MEAL MILLS v. ST. LOUIS S. W. RY. CO., Ark., 41 S. W. Rep. 810.

20. CARRIERS OF GOODS—Failure to Deliver Freight—Liability of Warehousemen.—Where cotton was received by a railway company for transportation, and a portion thereof was not delivered at the place of destination, any error in allowing witnesses to testify, in an action for the value of the portion not delivered, as to the highest price of cotton between the date of the delivery the remainder thereof and the time of trial, was cured by charging that, if plaintiffs were entitled to recover, their damages would be the value of the cotton lost, at the time it should have been delivered.—HIPP v. SOUTHERN RY. CO., S. Car., 27 S. E. Rep. 623.

21. CARRIERS OF PASSENGERS — Selling Tickets to Wrong Place.—Plaintiff, in an action against a carrier for selling a ticket to his wife to the wrong station, whereby she was compelled to wait among strangers for a week for money from him with which to continue her journey, cannot recover for mental suffering, where she was not mistreated in any way, received no personal injury, was not made sick, nor her health in any manner impaired, and there was no direct proof of such suffering.—TEXAS & P. RY. CO. v. ARMSTRONG, Tex., 41 S. W. Rep. 833.

22. CERTIORARI — Remedy by Appeal. — When the court the proceedings of which are sought to be reviewed has jurisdiction of the controversy, and there is a remedy by appeal from its judgment, there is no basis for the writs of *certiorari* or prohibition.—STATE v. WILDER, La., 22 South. Rep. 661.

23. CHATTEL MORTGAGE—Discharge of Lien.—When a creditor seeks to subject the property of his debtor to the payment of his claim, upon which property there exists a chattel mortgage, and the creditor to avail himself of the remedy provided by section 3389, Rev. St., pays to the mortgagee the amount of such mortgage, such payment by the creditor discharges the mortgage and the lien thereunder, and the creditor cannot thereafter enforce the mortgage lien.—BAUMGARTNER v. VOLLMER, Idaho, 49 Pac. Rep. 729.

24. CHATTEL MORTGAGE—Law of Place—Comity.—A chattel mortgage made in Missouri by a person domiciled there to a citizen of this State, upon property situated in this State, is governed by the law of Kansas, and not by the law of Missouri, as the place of the contract.—MACKEY v. PETTYJOHN, Kan., 49 Pac. Rep. 636.

25. CONSTITUTION—Proposed Amendment.—A proposition for an amendment to the constitution, entered in full upon the journal of the senate, and by title only upon the journal of the house, is entered upon the journals of the two houses, within the meaning of Const., art. 23, § 1, providing that a "proposed amendment or amendments shall be entered on their journals."—STATE v. HERRIED, S. Dak., 72 N. W. Rep. 93.

26. CONSTITUTIONAL LAW—Distribution of Powers of Government.—Under Const. 1818, art. 2, § 1, providing that the powers of government shall be divided into three distinct departments, and each of them confided to separate magistracies, the general assembly has no judicial power, and it cannot confer such power on a court, or on a judge thereof.—APPEAL OF NORWALK ST. RY. CO., Conn., 37 Atl. Rep. 1080.

27. CONSTITUTIONAL LAW—Fires Set by Locomotives.—Section 2 of chapter 165 of the Laws of 1885, which authorizes the allowance of an attorney's fee in actions against railroad companies to recover damages caused by fire in the operation of the railroads, does not violate the first and eighteenth sections of the bill of rights of the constitution of this State, or section 1 of article 14 of the constitution of the United States, but is a valid law.—ATCHISON, T. & S. F. R. CO. v. MATHEWS, Kan., 49 Pac. Rep. 602.

28. CONSTITUTIONAL LAW — Interstate Commerce — What Constitutes—Statute Affecting—Validity.—Where a foreign corporation sent its agent into Montana to buy or solicit the consignment of wool to its warehouses in other States, the business thus conducted was interstate commerce, within Const. U. S. art. 1, § 8, giving congress the exclusive power to regulate interstate commerce. — MACNAUGHTON CO. v. MCGIRL, Mont., 49 Pac. Rep. 651.

29. CONTRACT — Building Contract—Substantial Performance.—The general rule is that one who seeks to recover on a contract must show substantial performance on his part, and this rule applies to a "building contract" as to any other. But slight omissions and inadvertences should be disregarded. Where there has been an honest effort by the contractor to perform, and not a willful omission, substantial performance is all that is required.—ASHLEY v. HENAHAN, Ohio, 47 N. E. Rep. 573.

30. CONTRACTS—Public Policy—Transfer of Stock.—Where a stockholder of a corporation transferred to its president shares of stock to be used to influence certain persons high in authority and influence in certain governments in obtaining renewals of certain leases from such governments held by the corporation, and such shares were not so used, in an action by the stockholder against the president to have it declared that defendant hold such shares in trust for plaintiff, the question whether such contract was void as against public policy is immaterial.—WASSERMANN v. SLOSS, Cal., 49 Pac. Rep. 566.

31. CORPORATION — Directors — Assessment.—Where an assessment on the capital stock of a corporation has been made by a board of directors *de jure*, and there is no question as to any irregularity in the levy, or any want of authority on the part of the lawful board to make it, the assessment will be held valid, and an injunction to restrain its collection denied.—CHANDLER v. SHEEP ROCK MINING & MILLING CO., Utah, 49 Pac. Rep. 535.

32. CORPORATION—Foreign Corporations—Validity of Contracts.—A non-resident corporation may recover on a contract made in the State, though it has not complied with Gen. Laws, ch. 253, §§ 36, 41, requiring the appointment of a resident as its attorney.—GARRATT FORD CO. v. VERMONT MANUFG. CO., R. I., 37 Atl. Rep. 948.

33. CORPORATIONS — Franchise Fee—Itinerant Salesmen.—Public Acts 1893, No. 79, requiring a franchise fee to be paid by every foreign corporation permitted to transact business in the State, does not apply to a foreign corporation selling goods through its itinerant salesmen.—M. I. WILCOX CORDAGE & SUPPLY CO. v. MOSHER, Mich., 72 N. W. Rep. 117.

34. CORPORATION—Gas Companies — Ultra Vires.—A corporation organized for the purpose of "manufacturing and supplying illuminating and heating gas" may deal in appliances for the consumption of gas as well as for its manufacture and distribution.—MALONE v. LANCASTER GAS LIGHT & FUEL CO., Penn., 37 Atl. Rep. 932.

35. CORPORATIONS—Lease of Plant.—It is competent for the directors and majority of stockholders of a joint-stock manufacturing corporation against the will of the minority of the stockholders to lease its entire plant for 10 years, where the lessee is to carry

on the business for which the corporation was organized. — BARTHOLOMEW v. DERBY RUBBER CO., Conn., 38 Atl. Rep. 45.

36. CORPORATION—Officers — Liability as Partners.—Plaintiff furnished lumber to a bridge company, and testified that he dealt with the individuals connected with the company as with a copartnership, and he did not know it was incorporated until he signed the complaint in the suit: Held, that the issue of partnership should be submitted to the jury, for though there was a corporation, its officers and agents might, by their conduct, bind themselves individually as copartners.—RUST-OWEN LUMBER CO. v. WELLMAN, S. Dak., 72 N. W. Rep. 89.

37. CORPORATIONS — Partnership — Accounting. — Though a corporation cannot legally enter into a partnership, yet, it having done so, it must account to the other partner, who has fully performed all the obligations of his contract.—BOYD v. AMERICAN CARBON-BLACK CO., Penn., 37 Atl. Rep. 937.

38. CORPORATIONS—Powers of President.—A president and general manager of a corporation governed by a by-law giving him entire charge of the affairs of the business, subject to the approval of the board of directors, has not the power, without the assent of the board of directors, when the corporation becomes insolvent, to transfer all the assets within his control to satisfy debts to one of its creditors, as against another creditor attaching a part of the goods sought to be transferred.—HADDEN v. LINVILLE, Md., 38 Atl. Rep. 37.

39. CORPORATIONS—Reclamation Districts—Liability for Negligence.—A reclamation district, being, under the law of California, a corporation of a *quasi* public character, is not liable to a private action for negligence in the performance of its duties, or for a nuisance. —SELS v. GREENE, U. S. C. C., N. D. (Cal.), 81 Fed. Rep. 555.

40. CORPORATIONS — Sale of Stock by President.—Where the stockholders of a corporation, being ignorant of the selling value of their stock, authorize the president of the company to find a purchaser and effect a sale of their shares at par, and such president, at and before such time, was in secret correspondence and negotiation for the sale of the stock, with a view to a large profit to himself, and, by affirmative acts and misrepresentations, concealed his transactions from the stockholders, and effected a sale of their stock for a sum largely in excess of par, he cannot retain such excess, but must account to the stockholders for the profits made, notwithstanding he had stated to them that he would retain for his services as agent any sum realized above that for which he was authorized to sell.—MULVANE v. O'BRIEN, Kan., 49 Pac. Rep. 607.

41. CORPORATIONS—Stockholders' Meeting—Election of Directors.—Under Const. § 207, providing that in all elections for directors of any corporation the system of cumulative voting shall be adopted, and that directors shall not be elected in any other manner, it is no objection to the validity of an election that stockholders did not vote their stock cumulatively, it not appearing that any stockholder claimed the right to do so.—SCHMIDT v. MITCHELL, Ky., 41 S. W. Rep. 929.

42. CRIMINAL LAW—Adultery—"Maiden."—The word "maiden" in an indictment of a man for adultery did not mean a virgin necessarily, but merely a young unmarried woman.—STATE v. SHEDRICK, Vt., 38 Atl. Rep. 75.

43. CRIMINAL LAW—Assault.—A defendant indicted for an assault with a dangerous weapon with intent to do bodily harm may be found guilty of a simple assault, in view of Comp. Laws, § 7429, providing that "the jury may find the defendant guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment."—STATE v. FINDER, S. Dak., 72 N. W. Rep. 97.

44. CRIMINAL LAW — Forgery — Notary Public — The making by a notary public of a jurat or certificate containing false statements, to an affidavit in support of a pension claim, does not constitute an offense under Rev. St. § 5421, providing for the punishment of "every person who falsely makes, alters, forges or counterfeits any deed, power of attorney, order, certificate, receipt or other writing for the purpose of obtaining or receiving, or enabling any other person, directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money;" the offense defined by said section being the false making or forgery of the writings enumerated. — UNITED STATES v. GLASENER, U. S. D. C., S. D. (Cal.), 81 Fed. Rep. 566.

45. CRIMINAL LAW—Homicide — Provocation.—Where the provocation consists only in words, and a weapon is used which will probably produce death, words are not an adequate provocation to reduce the offense of murder to manslaughter. — CLIFFORD v. STATE, N. J., 37 Atl. Rep. 1101.

46. CRIMINAL LAW—Rape—Evidence—Corroboration. —Though defendant testifies, and denies a rape, he may be convicted thereof on the uncorroborated evidence of prosecutrix.—STATE v. MARCKS, Mo., 41 S. W. Rep. 973.

47. CRIMINAL LAW—Rape of Feeble Minded Woman.—The fact that defendant did not know that the woman was too feeble-minded to give consent is no defense to a charge of rape, which, by Pen. Code, § 261, subd. 2, is defined as intercourse with a female incapable of giving consent through mental unsoundness.—PEOPLE v. GRIFFIN, Cal., 49 Pac. Rep. 711.

48. CRIMINAL PRACTICE—Indictment.—Sand. & H. Dig. § 3428, makes it unlawful for any person, with intent to kill or paralyze any fish, to deposit in any water any explosive material or any stupefying liquid, "or" take from any water any fish so stupefied or killed: Held, that an indictment was not duplicitous which charged that defendant put dynamite in a certain lake, with intent to kill fish therein, "and" took from said waters fish that had been so killed, etc. — KEOUN v. STATE, Ark., 41 S. W. Rep. 809.

49. DEATH BY WRONGFUL ACT — Action.—An action for personal injuries not resulting in death survives to the personal representatives under section 420 of the Civil Code, where the injured person dies from other causes. If death results from the injuries, an action cannot be maintained by the personal representative of the deceased for the benefit of the estate, but may be brought, under section 422 of the Civil Code, for the benefit of the next of kin. — MARTIN v. MISSOURI PAC. RY. CO., Kan., 49 Pac. Rep. 605.

50. DEEDS — Grantees — Acknowledgment. — Where there are several grantees named in a deed, each receiving a separate and defined interest, and the grantor's acknowledgment is taken by one of them, the deed must be treated as if executed separately to each of such grantees, and good as to each of them except the one taking the acknowledgment. — MURRAY v. TULARE IRRIGATION CO., Cal., 49 Pac. Rep. 563.

51. DEED — Reservation of Power to Mortgage. — A deed conveyed a fee, subject to a life estate in the grantor, and "reserving the right to occupy and use the premises as fully and freely as I might do if the fee and title was to remain in myself, with full power to mortgage said premises to raise money for my own personal benefit at any time I may desire for and during my natural life." The grantor warranted the title against all demands "except any claim that may arise under the reservation aforesaid:" Held, that the grantor retained the right to mortgage the fee, and not merely his life estate. — BOUTON v. DOTY, Conn., 37 Atl. Rep. 1064.

52. DIVORCE — Desertion.— Belief that a wife is guilty of adultery, though justified by gravely suspicious circumstances, is no defense to her suit for divorce a *vinculo matrimonii*, on the ground of his willful, continued, and obstinate desertion, where adultery is not proved. — DRAYTON v. DRAYTON, N. J., 38 Atl. Rep. 2.

53. EJECTMENT AGAINST STATE OFFICERS—Execution. —When final judgment in ejectment has been rendered against persons in possession as officers of the State, execution will be enforced, as against a stranger who also claims to be in possession as a State officer, though he asserts that his possession was not acquired through or under the defendants.—WESLEY v. TINDAL, U. S. C. C., D. (S. Car.), 81 Fed. Rep. 612.

54. ELECTIONS — Contest — Notice. — Under Comp. Laws, § 1489, requiring the notice of contest of an election to office to set forth the facts and grounds on which contestant relies, a notice which alleged that the contestant "was duly elected" sufficiently stated that he possessed the legal qualifications, where such allegation was not denied except by the specific denial that he received a majority of the votes polled in the two precincts specified in the notice. — CHURCH v. WALKER, S. Dak., 72 N. W. Rep. 101.

55. EQUITY — Adequate Remedy at Law. — In a suit whose issues involve the setting aside of a recorded deed, the invalidity of which does not appear on its face, and must be established by matters dehors the deed, there is no such plain, adequate, and complete remedy at law as will oust the jurisdiction of the court. —SOUTHERN RY. CO. v. NORTH CAROLINA R. Co., U. S. C. C., W. D. (N. Car.), 81 Fed. Rep. 595.

56. EQUITY — Decree Pro Confesso. — After a decree *pro confesso* has been regularly entered against a defendant in a chancery cause, he so far loses his standing in the court as not to be entitled to notice or hearing in the future proceedings.—PRICE v. BODEN, Fla., 22 South. Rep. 657.

57. EQUITY PLEADING — Exceptions to Answer. — Exceptions will lie to an answer for insufficiency or impertinence, even though answer under oath is expressly waived; the bill being one for relief as well as for discovery.—WHITTEMORE v. PATTEN, U. S. C. C., S. D. (Cal.), 81 Fed. Rep. 527.

58. EVIDENCE—Customs.—To establish the validity of a custom of trade, on which a party relies in an action for personal injury, the usage must have existed such a length of time as to become generally known, and must be shown to be reasonable, uniform, certain, and not contrary to law; and it is error for a court to charge a jury that the custom or usage must be "so certain as the business to which the rule applies will permit," there being no comparative degrees as to the certainty of a custom.—NELSON v. SOUTHERN PAC. CO., Utah, 49 Pac. Rep. 644.

59. EVIDENCE—Declarations of Agent. — The declarations of an agent are admissible only when the existence of the agency has been satisfactorily established by other competent evidence. — BENNETT v. TALBOT, Me., 38 Atl. Rep. 112.

60. EVIDENCE — Declarations. — Declarations of the conductor of a train as to how a person was injured thereby, made two months after the accident, are not admissible against the railroad company. — NEBONNE v. CONCORD R. R., N. H., 38 Atl. Rep. 17.

61. EVIDENCE—Parol Evidence—Assumption of Mortgage.—Parol evidence of an agreement between vendor and vendee, whereby vendee assumed the payment of certain notes of vendor, as part of the purchase price of the property conveyed, is inadmissible for the purpose of placing such vendor in the attitude of surety as to such notes, without proof that the holder of the notes had notice of such agreement.—NELSON v. BROWN, Mo., 41 S. W. Rep. 960.

62. EXECUTION—Distribution of Proceeds.—Money in the hands of a sheriff, by him collected upon execution, before the same is returnable or returned, is not subject to be taken by such sheriff on other writs, or applied by him in satisfaction of other writs against the plaintiff in the execution, and which such sheriff may hold against him.—EATON v. MCELHONE, Kan., 49 Pac. Rep. 695.

63. EXECUTION—Exemptions — Rights of Widow and Heirs. — The widow and heirs, on the death of the paterfamilias, acquire their proprietary rights of property in the things exempted, not from the constitutional provisions exempting them from forced sale for the payment of debts, but entirely from the statutes regulating dower and the descent of property, unaffected by such constitutional provisions, except that the latter instrument appends to the things exempted, in their transmission to the widow and heirs, the feature of immunity from forced sale for the debts of the ancestor. — HINSON v. BOOTH, Fla., 22 South. Rep. 687.

64. EXECUTION — Levy — Validity. — To constitute a valid levy on personalty belonging to a partnership, to pay the debt of an individual partner, or on personalty in the hands of a trusteee, notice of the levy must be given to one or more of the partners, or to the clerk of the partnership, or to the trustee, as the case may be.—SUMNER v. CRAWFORD, Tex., 41 S. W. Rep. 824.

65. EXECUTION SALE — Failure to Confirm. — Comp. Laws, § 5149, provides that the court, if satisfied on return of a writ of execution that the sale was in conformity with statute, shall confirm the same, and direct the officer to execute a deed at the expiration of one year, unless the land is redeemed. Section 5160 declares that the deed shall be sufficient evidence of the legality of the sale, until the contrary is proven, and shall vest in the purchaser as good title as the judgment debtor had: Held, that where the proceedings are shown to be regular in other respects, mere failure to have the sale confirmed will not defeat the purchaser's title, especially on collateral attack by one who does not claim through or under the judgment debtor. — BAXTER v. O'LEARY, S. Dak., 72 N. W. Rep. 91.

66. FEDERAL COURTS — Jurisdiction—Intervention.— The circuit court cannot take jurisdiction of an intervention in a merely personal action, in which no fund has come into the possession of the court, by one who is a citizen of the same State as the party against whom his complaint is directed.—SELIGMAN v. CITY OF SANTA ROSA, U. S. C. C., N. D. (Cal.), 81 Fed. Rep. 524.

67. FEDERAL COURTS — Jurisdiction — Specific Performance.—A suit for the specific performance of a contract to assign a patent is not one arising under the laws of the United States, and the federal courts have no jurisdiction of it as such.—PLIABLE SHOE CO. v. BYRANT, U. S. C. C., N. D. (Cal.), 81 Fed. Rep. 521.

68. FEDERAL COURTS—Jurisdiction—Suits to Wind up National Banks.—A suit against an agent of the shareholders of a national bank, appointed pursuant to the act of congress to wind up its affairs, by which suit it is sought to restrain such agent from disposing of the property of the bank, and to secure the appointment of a receiver of such property in order that it may be distributed under the orders of the court, being in effect a suit to wind up the affairs of an insolvent national bank, is a suit arising under the laws of the United States of which the federal courts have jurisdiction concurrent with the State courts.—SNOHOMISH COUNTY v. PUGET SOUND NAT. BANK OF EVERETT, U. S. C. C., D. (Wash.), 81 Fed. Rep. 518.

69. FIXTURES—Chattel Mortgage—Purchaser Without Notice.—Plaintiff sold a boiler, and took in part payment a note secured by chattel mortgage thereon, which was registered. The boiler was permanently attached to the buyer's land, which was afterwards sold under a decree foreclosing a vendor's lien thereon; and defendant, without actual notice of the chattel mortgage, purchased the land from the purchaser at the foreclosure sale: Held, that his title to the boiler was not affected by the mortgage.—ICE, LIGHT & WATER CO. v. LONE STAR ENGINE & BOILER WORKS, Tex., 41 S. W. Rep. 835.

70. FRAUDULENT ATTACHMENT—Creditors at Large.— In a creditors' suit to set aside a fraudulent attachment, complainants, whose demands are past due, may maintain the bill without amendment, though

joined with others whose demands are not due, and as to whom there must be a dismissal.—BROWNOLD v. PASSE, Ala., 22 South. Rep. 662.

71. FRAUDULENT CONVEYANCE — Consideration.—A mortgage which, upon its face, purports to secure an absolute indebtedness, when in fact it is given in good faith to secure the mortgagee against a contingent liability as surety, is not void as to creditors of the mortgagor.—REXROAD v. JOHNSON, Kan., 49 Pac. Rep. 699.

72. FRAUDULENT CONVEYANCES — Consideration — Parent and Child.—The fact that a deed was executed and delivered to a grandchild, who had rendered services to the grantor both before and after becoming of age, does not raise a presumption of a valid considera tion for the deed, as against creditors of the grantor, where the relation of parent and child existed between grantor and grantee.—DODSON v. SEVERS, N. J., 38 Atl. Rep. 28.

73. FRAUDUDENT CONVEYANCE — Creditors' Suit. — Where a creditors' bill contains such allegations of fact that the court can see that there is no remedy at law, or that such remedy is wholly inadequate, or shows that the creditor claims a trust in his favor, and that the relief can only be made available in a court of chancery, the court will not require him in the first instance to obtain an empty judgment and fruitless execution, as a condition precedent to entertaining his bill. — EARLY TIMES DISTILLERY CO. v. ZIEGER, N. Mex., 49 Pac. Rep. 723.

74. FRAUDULENT CONVEYANCE—What Constitutes.—A debtor, knowing that he would soon die, executed a deed to his brother, which recited as a consideration the agreement to pay a mortgage of $400 and a note of $250. Oral evidence showed that there was a further consideration of the extinguishment of a debt to the grantee of $408, and a promise to pay a debt of $125 to a third brother. The four sums did not exceed the value of the land: Held, that there was no fraud in the transaction, as against the grantor's other creditors.—KINCAID v. IRVINE, Mo., 41 S. W. Rep. 963.

75. GARNISHMENT—Exemptions—Past-Due Wages.—Past-due wages voluntarily left by the employee in the hands of the employer cease to be current wages, and are not exempt, under Const. art. 16, § 28, and Rev. 1895, art. 252, providing that "no current wages for personal service shall ever be subject to garnishment."—DAVIDSON v. F. H. LOGEMAN CHAIR CO., Tex., 41 S. W. Rep. 824.

76. GARNISHMENT LIEN — Attachment — Priority.—A gave a chattel mortgage to B to secure an indebtedness upon a stock of goods of value largely in excess of the amount of the debt, and B takes possession of the same upon a failure to perform the obligations of the mortgage on the part of A. C, another creditor of A brings an action of garnishment on his claim, and serves a garnishment summons upon B, while in the possession of said goods. D, still another creditor, brings an action of attachment, under which the sheriff takes the goods: Held, that the lien of the garnishment is prior and superior to that of the later attachment.—R. T. DAVIS MILL CO. v. BANGS, Kan., 49 Pac. Rep. 628.

77. GARNISHMENT — Mortgage on Homestead.—The proceeds of a mortgage given upon a homestead are not subject to garnishment for the payment of an ordinary judgment indebtedness. The husband and wife have a right to sell or mortgage the homestead, and the money derived from such sale or mortgage is exempt.—BRENNEKE v. DUIGENAN, Kan., 49 Pac. Rep. 687.

78. GIFT—Bank Stock—Reservation of Life Estate.—An owner of bank stocks gave them to his granddaughter, expressly reserving to himself a life estate therein. Two years later, the donee and her husband executed a written agreement, without a valuable consideration, reciting that they "do now contract, promise and agree to and with the said (donor) that after his death they will pay to his personal representatives the full amount of such surplus fund as shall have been earned at the time of his death by said stock; and such surplus fund so earned, as aforesaid, shall be paid" out of the first dividends declared after the donor's death: Held, that the agreement being wholly promissory, and without consideration, there was no regift of the undivided surplus.—THOMPSON v. HUDGINS, Ala., 22 South. Rep. 633.

79. GIFTS—Conversion.—Delivery by a depositor in a savings bank to M, of an order on the bank to transfer the deposit on its books to plaintiffs, subject only to the right of M to draw from it so much, if any, as should be necessary for his proper support, followed by notice to the bank, will, on acceptance of the gift by plaintiffs, invest them immediately, and before any actual transfer on the books of the bank, with the equitable title to the deposit, subject only to drafts thereon for the proper support of M.—MCNAMARA v. MCDONALD, Conn., 38 Atl. Rep. 54.

80. GIFT—Evidence.—B loaned S, his son-in-law, $7,800, and received a common money bond, in the ordinary form, in the penal sum of $15,600, "to be paid to the said B," etc., and conditioned that if S paid B $7,800, "without interest, to be accounted for when a final settlement is made of his estate," the bond should be void. S wanted the money to buy a farm. His wife died before her father and S became insolvent: Held, that the facts did not warrant a conclusion that the money was a gift by way of advancement, and that after B's death, it was to be settled for by charging it against his daughter's share of his estate.—IN RE STRICKLER'S ESTATE, Penn., 37 Atl. Rep. 999.

81. GUARANTY—Construction.—Time is the essence of a guaranty to take back and pay the par value of stock upon January 1, 1895; hence the makers of such a guaranty are not bound to pay for the stock tendered after said date.—CABOT v. KENT, R. I., 37 Atl. Rep. 945.

82. GUARDIANSHIP — Accounting—Parties.—In a suit involving an account of the guardianship of a decedent, the administrator of the guardian is a necessary party.—BRASSELL v. SILVA, S. Car., 27 S. E. Rep. 622.

83. HOMESTEAD — Abandonment.—While the law is well settled that a temporary absence in search of health or pleasure, or on another place for purposes of business, will not deprive the homestead claimant of his right, unless it be apparent that there was a design of permanent abandonment, yet it is equally well settled that a permanent abandonment of the homestead as a *bona fide* home and place of permanent abode strips it of its homestead character, and deprives the claimant of the right to exempt it from sale for his debts.—MURPHY v. FARQUHAR, Fla., 22 South. Rep. 681.

84. HOMESTEAD.—A homestead once acquired continues to be such until the owner changes its character by disposing of it or leaving it with the intention to permanently abandon it as his homestead, and the acquirement of another residence without the intention of making it a homestead does not of itself constitute a permanent abandonment of the original homestead.—BAUM v. WILLIAMS, Tex., 41 S. W. Rep. 840.

85. HOMESTEAD—Conveyance—Subrogation.—A mortgage given upon the homestead without the joint consent of husband and wife is void. The alienation of a homestead after it has once been established is such a personal privilege as cannot be delegated by either the husband or wife to the other. There has been a guard thrown not only around the wife, but also around the husband. The doctrine of unity between husband and wife has been solemnly declared in the constitution, and the homestead cannot be alienated without their joint consent. — LOCKE v. REDMOND, Kan., 49 Pac. Rep. 670.

86. HOMESTEAD — What Constitutes.—In an action brought by the plaintiff to enjoin defendant from selling certain land on execution, on the ground that it was exempt, under section 3429, subd. 11, Comp. Laws Utah 1888, relating to homesteads, held, that the land

not being the residence of the plaintiff or his family, nor in any manner appurtenant to, or used in connection with, their residence, nor selected by the plaintiff for a homestead, is not within the exemption provided for in the statute, and hence subject to sale by the judgment creditor.—GAMMETT v. STORRS, Utah, 49 Pac. Rep. 642.

87. HUSBAND AND WIFE—Separation.—In a proceeding under Laws 1889, p. 92, to compel a husband to contribute to his wife's support, the wife, if living apart from her husband, must allege and prove that the separation is without her fault, and that he has, without just cause, neglected or refused to support her.—FOWLER v. FOWLER, Oreg., 49 Pac. Rep. 589.

88. INJUNCTION—Breach.—In determining whether an actual breach of an injunction has been perpetrated, its terms must be considered, and when the writ does not specificially restrain the parties enjoined from the commission of definite acts, but only in a general way enjoins them from the performance of acts complained of in the complaint, it must satisfactorily appear, in order to constitute a breach of the injunction, that the acts performed were included within its scope.—COIT v. FREED, Utah, 49 Pac. Rep. 533.

89. INSURANCE—Agent.—An insurance agent supplied with policies in blank, and authorized to issue them, and who signs and delivers them to parties desiring insurance, receiving the premiums and accounting for them to the company, is a general agent within his territory in the matter of soliciting and accepting risks and agreeing on the terms of the contract.—HARTFORD FIRE INS. CO. OF HARTFORD, CONN. v. KEATING, Md., 38 Atl. Rep. 29.

90. INSURANCE—Employers' and Carriers' Liability.—Under policies issued to employers and railroad companies, insuring them against damages with which they might be "legally charged" by reason of accident to employees, or to persons or property while being transported, the liability of the insurer arose on the happening of the injury, and not at the time judgment was recovered against the insured for such injury.—ROSS v. AMERICAN EMPLOYERS' LIABILITY INS. CO., N. J., 38 Atl. Rep. 22.

91. INSURANCE — Forfeiture—Waiver.—An agreement for appraisement between an insurance company and insured provided that the submission was without reference to any other matter of difference than the damage to the property, and should be of binding effect only so far as regarded the same; and the policy provided that the company should not be held to have waived any condition by proceeding to an appraisal: Held, that the company did not waive a condition rendering the policy void in case of a double insurance.—HOLBROOK v. BALOISE FIRE INS. CO., Cal., 49 Pac. Rep. 555.

92. INSURANCE—Pleading.—In an action on an insurance policy, it was alleged that plaintiff was the owner of the property destroyed, at the time of the fire, to which allegation defendant interposed a denial of knowledge or information sufficient to form a belief: Held, that such denial was sufficient to raise the question of such ownership, where defendant was a foreign corporation, and not presumed to know who was the owner of such property at the time of such loss, nor required to ascertain such fact before pleading to the complaint.—BARTOW v. NORTHERN ASSUR. CO. OF LONDON, ENGLAND, S. Dak., 72 N. W. Rep. 86.

93. INSURANCE—Waiver by Agent.—A stipulation that no agent of the insurer shall have power to waive "any provision or condition" of the policy does not apply to a requirement that proofs of loss must be furnished within a specified time.—SNYDER v. DWELLING HOUSE INS. CO., N. J., 37 Atl. Rep. 1022.

94. INTERSTATE COMMERCE ACT.—When relief by way of damages is sought under the provisions of the interstate commerce act, upon the averment that a shipper has been charged an unreasonable rate for goods transported by a railway company, the plaintiff, in order to be entitled to recover, must show that the rate charged is unreasonable according to the provisions of that act.—VAN PATTEN v. CHICAGO, ETC. RY. CO., U. S. C. C., N. D. (Iowa), 81 Fed. Rep. 545.

95. INTOXICATING LIQUORS — Actions for Price—Judicial Notice.—Judicial notice will be taken, in an action for price of wine, that wine is intoxicating.—STARACE v. ROSSI, Vt., 37 Atl. Rep. 1109.

96. JUDGMENT AGAINST ADMINISTRATORS—Privity of Legatees.—While, in general, a judgment against executors or administrators *c. t. a.* is binding on legatees, yet it is not so binding when the suit is commenced or revived after the administrators' accounts have been settled, and all the property in their hands pa'd over to the legatees and trustees under the will, pursuant to a decree of the proper court; for the trust is then practically terminated, the administrators are devested of all control over the property, and the privity between them and the legatees and trustees terminated.—CAREY v. ROOSEVELT, U. S. C. C., S. D. (N. Y.), 81 Fed. Rep. 608.

97. JUDGMENT—Collateral Attack.—Where a justice of the peace renders a judgment against the defendant, and makes an order requiring the garnishee to pay certain money into court, such judgment and order cannot be attacked by the judgment debtor in a collateral proceeding, although the property in controversy may be exempt.—DAY v. FIRST NAT. BANK OF GARDEN CITY, Kan., 49 Pac. Rep. 691.

98. JUDGMENT—Excusable Neglect.—Under 2 Hill's Ann. St. § 221, providing that the court may, on affidavit showing good cause, relieve a party from a judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect, though the application for relief is addressed to the discretion of the court, it must, in a plain case, grant relief.—HULL v. VINING, Wash., 49 Pac. Rep. 587.

99. LANDLORD AND TENANT—Excessive Distress.—The statute of Marlbridge, adopted in South Carolina in 1712 (2 St. at Large, 418), giving a cause of action to a tenant for unreasonable and excessive distress for rent, is no longer in force, and the landlord's right to distrain all the tenant's property on the premises is unrestricted.—BENDER v. ROSS, S. Car., 27 S. E. Rep. 627.

100. LANDLORD AND TENANT — Leases—Use of Premises.—Where a lease does not contain an express or formal covenant that the premises shall be used for a certain purpose, with a forfeiture clause in case of a breach, but does contain language and stipulations equivalent to such a covenant, the lessor may, by injunction, prevent the lessee, or those claiming or holding under him, or acting by his authority, from converting the demised premises, or a part thereof, to uses inconsistent with the terms of the contract.—SPALDING HOTEL CO. v. EMERSON, Minn., 72 N. W. Rep. 119.

101. LIBEL—Innuendo — Demurrer.—An innuendo, in connection with a statement in the declaration that plaintiff had been closeted with a certain person, stating the purpose to have been to give such person protection in return for his political support and influence in a certain election, is bad on demurrer, as going beyond the meaning of the language complained of, or any suggestion to be legitimately drawn from it.—TIEFKE v. TIMES PUB. CO., R. I., 37 Atl. Rep. 1031.

102. LIENS—Employees' Wages—Prior Incumbrances.—The prior lien given by section 2485 of the Code of Virginia to the employees of transportation companies and mining and manufacturing companies, on all the real and personal property of such companies, and over which no mortgage, deed of trust, etc., can take precedence, attaches only to the interest in its property, acquired by the company which employed the claimants, and takes precedence only over mortgages, etc., made by it; and where such company has purchased property already subject to incumbrances made by the former owner, or has given a purchase money mortgage, such incumbrances are not displaced

by the employees' liens.—M. A. FURBUSH & SON MACH. CO. v. LIBERTY WOOLEN MILLS, U. S. C. C., W. D. (Va.), 81 Fed. Rep. 425.

103. LIFE INSURANCE — Completion of Contract.—The payment to an insurance agent of a sum equal to the first premium, and the taking of a receipt therefor, which expressly declares that if the application is accepted by the company, the insurance shall take effect from the date of application, but that, if the application is not accepted, the money shall be returned, and the receipt surrendered, does not amount to a contract of insurance until acceptance by the company, and, if the insured die before acceptance, the company is not liable.—STEINLE v. NEW YORK LIFE INS. CO., U. S. C. C. of App., Fifth Circuit, 81 Fed. Rep. 489.

104. LIMITATIONS—Action on Administrator's Bond.—The liability of an administrator for failure to pay over money of the estate to his successor when ordered to do so by the probate court, is one created by statute, and an action thereon by the administrator *de bonis non* against the sureties upon the bond of the former administrator can only be brought within three years after the cause of action has accrued.—DAVIS v. CLARK, Kan., 49 Pac. Rep. 665.

105. MARRIED WOMAN — Lien of Mortgage.—A personal judgment of the district court against a married woman upon a note and mortgage, and a judgment therein foreclosing said mortgage, and directing a sale thereof, operate as a lien upon the other real estate owned by such married woman to the same extent and effect as would a like judgment against a married man.—TARR v. FRIEND, Kan., 49 Pac. Rep. 633.

106. MARRIED WOMAN—Release — Validity.—Under Pub. St. ch. 166, §§ 1, 2, as amended by Pub. Laws, ch. 399, p. 131 (*Id.* ch. 1087, p. 211; *Id.* ch. 1204, p. 352), giving to married women the exclusive management of their property, the sole release of a married woman was sufficient to discharge a cause of action for personal injuries sustained by her, since her marriage, through the negligence of defendant's servant, though her husband may have been required to join in bringing an action therefor.—COONEY v. LINCOLN, R. I., 37 Atl. Rep. 1031.

107. MARRIED WOMAN—Separate Estate.—A conveyance to the wife in consideration of her assumption of a debt secured by a vendor's lien on the land, does not make the land her separate property, as she cannot acquire a separate interest in land entirely on a credit.—HARRISON v. MANSUR-TIBBETTS IMPLEMENT CO., Tex., 41 S. W. Rep. 842.

108. MARRIED WOMAN — Separate Estate — Conveyances.—Land which was the separate estate of a wife was sold and conveyed by her husband under a power of attorney from the wife, and the purchasers complied with the terms of the sale. Before rights of third persons intervened, the husband and wife joined in an instrument declaring that they "fully ratified and confirmed" the acts of the husband in the sale of the land, the intention of the parties being to perfect the titles of the purchasers: Held, that the latter instrument cured the defects in the deeds executed by the husband so as to vest title in the grantees.—SCALES v. JOHNSON, Tex., 41 S. W. Rep. 828.

109. MASTER AND SERVANT—Contributory Negligence.—Where an employee, while standing on a box on the top of a construction car, was thrown down and injured by the breaking of a trolley wire which he was tightening with a block and tackle, of the rotten condition of which he was ignorant, and the apparatus used by him was furnished by his employer, and commonly used for the purpose, he was not guilty of contributory negligence as matter of law, though he could have tightened the wire by standing on the car, and increased the risk by standing on the box.—DIXON v. BAUSMAN, Wash., 49 Pac. Rep. 540.

110. MASTER AND SERVANT — Negligence — Appeal.—Plaintiff, an employee of defendant, was called upon to operate a machine, and was injured in so doing. Shortly before the accident, defendant had reduced the distance between the roll and the cylinder of the machine one-half, which arrangement was unusual and unknown in the ordinary use of the machine, and greatly increased the hazard of operating it, and of which plaintiff was given no notice, which failure to give notice was the proximate cause of the injury: Held, that plaintiff could recover.—RYAN v. CHELSEA PAPER MANUFG. CO., Conn., 37 Atl. Rep. 1092.

111. MINES AND MINING—Mining Claims—Patents.—In order to entitle a locator of a mining claim to a patent, it is not necessary that there be a record that one to whom he had sold an interest has lost title by his failure to contribute his share of work and expense to represent the claim for certain years, and that the locator advertised the vendee out, by publication, as provided by Rev. St. U. S. § 2324. — RISTE v. MORTON, Mont., 49 Pac. Rep. 656.

112. MORTGAGE—Fixtures.—Fixtures actually or constructively annexed to the realty after the execution of a mortgage of the real estate become a part of the mortgage security, and, while the mortgage is in force, cannot be removed or otherwise disposed of by the mortgagor, or by one claiming under him, without the consent of the mortgagee. — EKSTROM v. HALL, Me., 38 Atl. Rep. 106.

113. MORTGAGE FORECLOSURE — Adverse Interests.—Where a party defendant in a foreclosure suit claims an adverse title paramount to the mortgagor and the mortgagee in possession of the property, and the plaintiff seeks to litigate and determine such adverse title, the defendant is entitled as of right to a trial by jury.—BUSENBARK v. PARK, Kan., 49 Pac. Rep. 683.

114. MORTGAGE — Foreclosure — Satisfaction by Mistake.—In a writ of entry to foreclose a mortgage alleged to have been satisfied by the mortgagee under a material mistake of fact, the question whether the mortgagee is entitled to have his discharge canceled and his mortgage re-established and foreclosed is one that must be determined upon a full consideration of all the evidence, and it is doubtful whether such question can be tried at all in such action at law.—STEBBINS v. ROBBINS, N. H., 38 Atl. Rep. 15.

115. MORTGAGES—Foreclosure—Taxes.—A mortgagee paid the taxes on the mortgaged premises before he commenced proceedings to foreclose by advertisement, but he did not state in his notice of sale the amount claimed for taxes paid at the date of the notice. His mortgage authorized him, in case of its foreclosure, to deduct from the money arising from the sale all sums paid by him for taxes, and in his notice of sale he stated that the premises would be sold to pay the principal and interest of the mortgage debt, and any sums paid for taxes or insurance. He was the purchaser at the sale, and included in his bid the full amount of his debt, including the sum paid for taxes and insurance: Held, that he was entitled to retain from the proceeds of the sale the amount of the taxes so paid.—HAMEL v. CORBIN, Minn., 72 N. W. Rep. 106.

116. MORTGAGEE IN POSSESSION—Sale.—Where a mortgagor surrenders possession of mortgaged premises to a mortgagee on account of a default in the conditions of the mortgage, the latter is given distinctly different and additional security for his debt. — LONGFELLOW v. FISHER, Minn., 72 N. W. Rep. 118.

117. MORTGAGE — Partial Payments — Releases. — A clause in a mortgage that a mortgagee shall, "from time to time, and as often as request was made to her or them for that purpose, release from the lien and operation of the said accompanying indenture of mortgage, for each ninety dollars of principal paid, a lot of land to be selected by the said party obligor, its successors and assigns, containing two thousand square feet of land," does not oblige the mortgagee to accept a payment of less than $90, or to release a fractional part of 2,000 square feet, or to release lots of an area less or more than 2,000 square feet each, at the rate of $90 each. — HALL v. HOME BLDG. CO., N. J., 37 Atl. Rep. 1019.

118. MORTGAGES — Payment to Agent.—Where a note secured by mortgage is assigned by a mortgagee, and payment by the mortgagor, without knowledge of the assignment, is made to one whom he believes to be the agent of the original mortgagee, before the mortgage is due, and without production of the note or mortgage by such agent, it is not binding on the assignee of the mortgage, where neither the original mortgagee nor the agent to whom payment is made is shown to be the agent of such assignee.—DODGE v. BIRKENFELD, Mont., 49 Pac. Rep. 590.

119. MUNICIPAL BONDS — Power to Issue. — An ordinance authorizing a city to issue negotiable bonds in exchange for outstanding warrants does not increase the municipal indebtedness, in violation of charter.—MORRIS & WHITEHEAD v. TAYLOR, Oreg., 49 Pac. Rep. 960.

120. MUNICIPAL CORPORATIONS—Defective Sidewalks. —The adoption by municipal officers of plans for the construction of a sidewalk is the exercise of a governmental duty, *quasi* judicial in character; and where the plan adopted is permissible in itself, and is not so defective as soon to require repairs to make the way safe for travel, there can be no recovery because of defects therein, under Gen. St. § 2673, providing that any person injured in person or property by means of a defective road may recover damages from the party bound to keep it in repair.—HOYT v. CITY OF DANBURY, Conn., 37 Atl. Rep. 1051.

121. MUNICIPAL CORPORATIONS — Dogs Running at Large — Ordinance. — An ordinance providing for the impounding of all dogs running at large in a city, for the notification to owners whose names are engraved on the dogs' collars, and for the killing of dogs not redeemed by the payment of one dollar within 24 hours after such impounding, is not unconstitutional, nor so unreasonable as that it should be declared void, as there can be but a qualified property in dogs.—MAYOR, ETC., OF HAGERSTOWN v. WITMER, Md., 37 Atl. Rep. 965.

122. MUNICIPAL CORPORATIONS—Indebtedness—Application of Surplus Revenues. — The Louisiana statute declaring that the revenues of municipalities for each year shall be devoted to the expenditures of that year, provided "that any surplus of said revenues may be applied to the payment of the indebtedness of former years" (Act No. 30 of 1877, § 3), is merely permissive as to the surplus, and does not constitute it a trust fund to pay the debts of former years. Therefore a creditor having judgments payable out of the revenues of particular years, "with full benefit of the provisions of section 3 of Act No. 30 of 1877," has no right to have the surplus of subsequent years administered for his benefit.—SIEGEL v. CITY OF NEW ORLEANS, U. S. C. C. of App., Fifth Circuit, 81 Fed. Rep. 522.

123. MUNICIPAL CORPORATIONS—Indebtedness—Public Improvements. — Where a city has no power to contract for certain improvements to be paid for out of the general fund, it cannot be made liable for failure to provide a special fund out of which payment was to be made. — GERMAN-AMERICAN SAV. BANK OF BURLINGTON, IOWA v. CITY OF SPOKANE, Wash., 49 Pac. Rep. 542.

124. MUNICIPAL CORPORATIONS — License Tax — Unauthorized Collection. — Where a license tax is paid to a city under protest, and subsequently recovered by the payor, on the ground that the tax was unauthorized, the city is liable for interest on the payment.—SOUTHERN RY. CO. v. CITY COUNCIL OF GREENVILLE, S. Car., 27 S. E. Rep. 652.

125. MUNICIPAL CORPORATIONS—Mayor—Term of Office. —A mayor of a municipal corporation, who has been regularly elected to the office, is entitled to serve until his successor is qualified; and while he continues to so serve on account of a failure to elect his successor there is no vacancy in the office, nor is the council authorized to make an appointment thereto. — STATE v. WRIGHT, Ohio, 47 N. E. Rep. 569.

126. MUNICIPAL CORPORATIONS—Ordinance — Regulation of Bicycle Riding.—Where the power to regulate the riding of bicycles on streets of a city devoted to the passage of vehicles is vested in municipal councils of cities of the second class by act of the legislature, this court will not say as a matter of law that an ordinance requiring every person using a bicycle to ring an alarm bell upon approaching any and all crossings or cross walks is unreasonable.—CITY OF EMPORIA v. WAGONER, Kan., 49 Pac. Rep. 701.

127. MUNICIPAL CORPORATIONS—Special Assessments —Limitation of Actions. — Where a city allows limitations to run against special assessments which it has agreed to collect as a fund for the payment of warrants, it is liable on the warrants.—BOWMAN v. CITY OF COLFAX, Wash., 49 Pac. Rep. 551.

128. MUNICIPAL ORDINANCES—Uncertainty.—An ordinance prohibiting the erection or use of "any awning, except the same be upon a suitable frame, and attached entirely to the building, which awning shall not when extended be less that six feet from the sidewalk," is void for uncertainty, because the word "suitable" has no definite meaning in the connection in which it is used.—STATE v. CLARKE, Conn., 37 Atl. Rep. 975.

129. NATIONAL BANKS — Stockholders — Fraudulent Transfer of Stock.—The burden is on the receiver of a national bank to show that a transfer of stock was made by the transferror for the fraudulent purpose of avoiding liability as a stockholder; and evidence showing that the husband of the transferror had knowledge of the embarrassed condition of the bank before the transfer was made, and that she had admitted that she never transacted any business without the advice of her husband, is not sufficient for that purpose, as against the positive statement of the transferror that no one ever suggested to her to transfer the stock for the purpose of relieving herself from liability, or suggested to her that the bank was in a failing condition, and that she made the transfer to her daughter as an advancement. — SYKES v. HOLLOWAY, U. S. C. C., D. (Ky.), 81 Fed. Rep. 432.

130. NEGLIGENCE — Proximate Cause.—No action for negligence will lie when the defendant's negligence has no causal connection with the plaintiff's injury. When the defendant's act or omission is not the real or proximate cause of the injury, but only affords the occasion for a purely accidental occurrence, causing damage without legal fault on the part of any one, no action can be maintained.—CONWAY v. LEWISTON & A. HORSE R. CO., Me., 38 Atl. Rep. 110.

131. NEGLIGENCE—Unavoidable Accident.—When loss to the plaintiff has been occasioned by accident and uncontrollable events the defendants, being without fault, are absolved from liability.—NEW ORLEANS & N. E. R. CO. v. MCEWEN & MURRAY, La., 22 South. Rep. 675.

132. NUISANCE — Abatement of Public Nuisance. — A private party, whose property is specially, peculiarly, and injuriously affected by the erection and maintenance of a public nuisance, may maintain an action to abate the same, and restrain the maintenance thereof.—DOUGLASS v. CITY OF LEAVENWORTH, Kan., 49 Pac. Rep. 676.

133. PARENT AND CHILD — Injury to Child—Recovery by Parent.—A parent, in an action for loss occasioned by injury to his child, can recover only for pecuniary loss sustained by him, and cannot recover for attention paid the child by other members of the family, which did not occasion him any expense.—WOECKNER v. ERIE ELECTRIC MOTOR CO., Penn., 37 Atl. Rep. 936.

134. PARENT AND CHILD — Support of Child—Liability of Father.—Obligation of a man, or of his estate after his death (Pub. St. ch. 189, § 17), to support his child, is not discharged by the procuring of a divorce by the mother, with alimony, and custody of the child.—DOLLOFF v. DOLLOFF, N. H., 38 Atl. Rep. 19.

135. PARTNERSHIP — Creditors — Priority of Claims. —Priority of seizure on execution of property by the

individual creditors of the owner thereof gives them a right in the distribution of the proceeds, superior to that of one whose claim arose from contracting with such owner and another as partners whose firm owned the property; there having in fact been no partnership, and the other person having no interest in the property.—HIMMELREICH v. SHAFFER, Penn., 37 Atl. Rep. 1007.

136. PARTNERSHIP LIABILITY.—The fact that certain persons permit themselves to be held out as partners in a concern does not render them liable as such to a creditor of the concern, unless it is shown that he extended credit on the faith of the ostensible partnership.—BURROWS v. GROVER IRR. CO., Tex., 41 S. W. Rep. 822.

137. PRINCIPAL AND AGENT — Undisclosed Agency.—Where an agent sold goods without disclosing his principal, and the principal understood from the buyer's statements that they had paid the agent therefor, the bringing of suit by the principal against the agent was no defense to a subsequent action by the principal against the buyers.—BERTOLI v. SMITH, Vt., 38 Atl. Rep. 76.

138. PRINCIPAL AND AGENT — Undisclosed Principal—Liability of Agent.—M bid off land at execution sale, directing the sheriff to charge the bid to "M, attorney," and, on the name of his principal being demanded, refused to disclose it, though told that he would be personally liable, and repeated his former direction, whereupon the sheriff so charged the bid: Held, that M was personally liable in an action of contract for the amount of the bid.—LONG v. MCKISSICK, S. Car., 27 S. E. Rep. 637.

139. PRINCIPAL AND AGENT — Salesman—Scope of Authority.—Jobbers were under an express contract with certain manufacturers not to sell goods at less than list prices. Their traveling salesman, A, was instructed to sell the goods only at list prices, and to make collections and receipt bills. A retailer, who knew of the contract, bought goods from A, who subsequently settled with him, and allowed him discounts as agreed on at the time of sale, though the goods were sold and bills rendered at list prices: Held, that the retailer was bound to inquire as to A's authority to make discounts.—BROWN v. WEST, Vt., 38 Atl. Rep. 87.

140. PRINCIPAL AND SURETY.—The surety does not become a creditor of the principal by the simple fact that he has entered into an engagement by which he may ultimately be made to pay money for or on his account.—DEROUEN v. NORRES, La., 22 South. Rep. 669.

141. PAYMENT — Receipt in Full — Burden of Proof.—Where, in an action on a lease, defendant introduced a receipt of "payment in full," under the lease, and it is not denied that plaintiff received the money specified therein, defendant established a *prima facie* defense, and the burden was on plaintiff to destroy the effects of the receipt.—RAMSDELL v. CLARK, Mont., 49 Pac. Rep. 591.

142. RAILROAD COMPANY — Collision — Negligence.—Where deceased was killed by a collision between defendant's train and that of another company at a crossing where defendant was by statute required to stop, and the defense was that, owing to causes beyond its control, the air brakes failed to work, it was not error to charge that if, after discovering such fact, defendant's servants could, by exercise of reasonable care, have stopped the train by other means, failure to do so was negligence.—MISSOURI, ETC. RY. CO. OF TEXAS v. RANSOM, Tex., 41 S. W. Rep. 826.

145. RAILROAD COMPANY — Contributory Negligence.—An adult with the senses of sight and hearing unimpaired, who, attempting in broad daylight to cross the three tracks of a railroad, is struck by a train on the last track, is guilty of contributory negligence; she having had an unobstructed view of the track, on which it was approaching, for 70 feet before she went on the first track, for 224 feet before going on the second track, and for 900 feet before going on the third track.—BAKER v. PENNSYLVANIA R. CO., Penn., 37 Atl. Rep. 933.

144. RAILROAD COMPANY — Negligence.—Under Sand. & H. Dig. § 6207, requiring that persons in charge of a moving train should see that a constant lookout is kept for persons and property on the track, every employee on the train need not be constantly on the lookout, but it is sufficient if the lookout is kept by one person, unless, by reason of curving track or other obstruction, an efficient lookout cannot be kept by one only.—ST. LOUIS S. W. RY. CO. v. RUSSELL, Ark., 41 S. W. Rep. 807.

145. RAILROAD COMPANY—Street Railway.—In an action for causing the death of plaintiff's child, where it appeared that such child, in the absence of its father, and while its mother was engaged in conversation on a business matter, temporarily escaped from her presence, and was run over by a cable car, and there was evidence that the accident might have been avoided by due care on the part of defendant's gripman, the negligence of the parties was properly submitted to the jury over defendant's request for an instruction for a verdict in its favor.—LEVIN v. METROPOLITAN ST. RY. CO., Mo., 41 S. W. Rep. 968.

146. RAILROAD COMPANY — Street Railroads—Franchise.—A complaint showing that defendant has a franchise to maintain its railway in a certain street, and claiming a forfeiture thereof because defendant has never operated such railway for the convenience of the public, though pretending to do so, is not ambiguous, in that it asserts a usurpation and unlawful exercise of such franchise, while it also alleges that defendant has never operated such railway.—PEOPLE v. SUTTER ST. RY. CO., Cal., 49 Pac. Rep. 736.

147. RAILROAD COMPANY — Street Railroads — Franchises—Forfeiture.—The privilege of laying its tracks on designated streets, to run cars thereon, and to receive fares, are franchises of a street railroad company, though derived directly from the city under ordinance passed under the grant of power contained in the city charter. The fact that such franchises are, in a sense, contractual in nature, is not a barrier to a proceeding by the State by *quo warranto* on the relation of the city to oust the company of its franchises, though there is an ordinance provision that, in case of default by the company, a forfeiture of its franchises may be had by proceeding instituted by the city in its own name.—STATE v. EAST FIFTH ST. RY. CO., Mo., 41 S. W. Rep. 955.

148. RAILROADS—Controlled Lines—Advances.—When one railroad company assumes the management of another, all the earnings of both being deposited in a common fund, from which all the expenses of both are paid, book entries being made to show how much is received from and how much expended for the latter road, the former is not a supplier of materials or contractor with the latter, so as to be entitled to a lien upon the property of the latter for the amount expended for it, over and above the amount received from it, but any such excess is only an advance of money.—U. S. TRUST v. WESTERN CONTRACT CO., U. S. C. C. of App., Sixth Circuit, 81 Fed. Rep. 454.

149. RAILROADS—Fires Set by Locomotives.—When the legislature has authorized railroad companies to use the dangerous element of fire for engendering steam for the propulsion of trains, and have enacted regulations in respect to the precautions to be taken to prevent the escape of fire from the smokestacks of their engines, held, that such legislative regulations define and limit the duty of the companies in respect to the precautions required against such escape of fire.—WEST JERSEY R. CO. v. ABBOTT, N. J., 37 Atl. Rep. 1104.

150. RAILROADS—Injury to Stock.—Acts 1891, ch. 101, § 2 (Railroad Fence Law), declaring a railroad company liable for injury to stock on or near its track, when caused by a train thereon, provided that contributory

negligence of the owner of the stock may be set up as a defense; but provided further that allowing stock to run at large on inclosed land of the stock owner, or on common unfenced range, shall not be deemed to be such contributory negligence; and provided further that proof of willful intent of the stock owner to procure such injury of his stock shall defeat recovery, is not limited in its application to stock running at large.—NASHVILLE, C. & ST. L. R. CO. v. SPENCE, Tenn., 41 S. W. Rep. 934.

151. RAILROADS—Right of Way.—Where the owner of the fee of land incumbered with a lien for purchase money conveys a right of way over it to a railroad company, which takes possession and constructs its road under such conveyance, all the lienor can claim is full compensation for the land appropriated, and he is not entitled to sell the land with the improvements thereon, in satisfaction of the lien.—FIRST NAT. BANK OF GADSEN v. THOMPSON, Ala., 22 South. Rep. 668.

152. RECEIVERS—Leave of Court.—The provisions of the act of August, 13, 1888, authorizing the bringing of suits, without leave of court, against receivers appointed by federal courts, in respect to any act or transaction in carrying on the business connected with the property in their charge, does not authorize the bringing of a suit, without leave, against such receiver, to establish a right to the property placed in his custody, adverse to his right thereto.—J. I. CASE PLOW WORKS v. FINKS, U. S. C. C. of App., Fifth Circuit, 81 Fed. Rep. 529.

153. REMOVAL OF CAUSES—Attachment Suits.—When an action is begun in a State court against a non-resident defendant by process of foreign attachment, without personal service, such defendant does not submit to the exclusive jurisdiction of the State court, nor waive the right to remove the cause to a federal court, by giving a bond to release the attachment in accordance with the State procedure.—PURDY v. WALLACE MULLER & CO., U. S. C. C., D. (Mass.), 81 Fed. Rep. 513.

154. REMOVAL OF CAUSES—Diverse Citizenship.—The restrictions as to the residence of parties contained in section 1 of the act of August 13, 1888, do not apply to jurisdiction by removal; and a suit between citizens of different States, commenced in a State court, may be removed to a federal court, though neither party is a citizen or resident of the State where such suit is commenced.—DUNCAN v. ASSOCIATED PRESS, U. S. C. C., S. D. (Cal.), 81 Fed. Rep. 417.

155. RES JUDICATA.—Where an accounting was had against a trustee at the instance of certain of the beneficiaries before a court having jurisdiction of the subject-matter and the parties, the judgment therein was *res judicata* as against the trustee, where no demand was made to distribute the funds, though all the beneficiaries were not parties to such accounting, the judgment roll of the former case not showing that the omitted beneficiaries were within the jurisdiction of the court.—ALISON v. GOLDTREE, Cal., 49 Pac. Rep. 571.

156. RES JUDICATA.—In an action to recover possession of land claimed by plaintiff under a patent granted in pursuance of a decree of confirmation by the board of land commissioners, such decree is conclusive against the government and all parties claiming under it by title subsequent.—LOS ANGELES FARMING & MILLING CO. v. THOMPSON, Cal., 49 Pac. Rep. 714.

157. RES JUDICATA—Ejectment.—A judgment in ejectment in favor of a tenant in common against his cotenant, claiming adversely, is conclusive on the parties and their privies, whether adults or minors, in a subsequent suit for partition.—ESTES v. NELL, Mo., 41 S. W. Rep. 940.

158. RES JUDICATA—Evidence.—Where a defendant relies upon a proceeding and judgment of the district court as *res judicata*, and not upon an arbitration, the court properly refused to allow one of the arbitrators to testify that the subject-matter was not considered by such arbitrators.—REPSTINE v. NETTLETON, Kan., 49 Pac. Rep. 617.

159. RES JUDICATA—Usury—Penalty.—Rev. St. § 1391, providing that any person who shall receive a greater amount of interest than provided in the preceding section shall, in addition to the forfeiture of interest therein provided, forfeit double the sum "so received" (*i. e.*, "upon any contract for the hiring of money," section 1390), to be collected by a separate action, etc., does not authorize such action where the only money received was the proceeds of sale under a decree of foreclosure in a former suit on a contract, to which the party seeking to recover such penalty might have interposed the defense of usury.—RYAN v. SOUTHERN MUT. BUILDING & LOAN ASSN., S. Car., 27 S. E. Rep. 618.

160. SALES—Fraud of Purchaser.—If a purchaser on credit, at the time of the sale, is insolvent, and knows himself to be so, he is under no obligation to disclose such fact to the seller; and, if he has a reasonable expectation of paying the price, the purchase is not fraudulent.—DIGGS v. DENNY, Md., 37 Atl. Rep. 1037.

161. SCHOOLS AND SCHOOL DISTRICTS—Teachers—Certificates.—Const. art. 9, § 7, providing that county superintendents and boards of education shall have "control" of the examination of teachers and the granting of teachers' certificates, does not prohibit the legislature from prescribing to whom and on what conditions certificates shall be granted; and hence a rule of a county board that holders of State normal school diplomas must have had one year's experience to entitle them to certificates higher than the primary grade is not superior to Pol. Code, § 1503, as amended by St. 1893, p. 267, providing that such diplomas shall entitle the holders to grammar grade certificates.—MITCHELL v. WINNEK, Cal., 49 Pac. Rep. 579.

162. STARE DECISIS—Like Cases.—The supreme court may reconsider and overrule an opinion announced on a former appeal respecting title to real property, especially where vast property rights are involved, and where it is improbable that many titles were acquired on the strength of the former opinion.—WILSON v. BECKWITH, Mo., 41 S. W. Rep. 985.

163. TAXATION—Collateral Inheritance Tax.—The existence of a single outstanding uncollected claim in favor of an estate does not prevent collection of collateral inheritance tax on the balance, after deduction for probable expenses.—IN RE MILLER'S ESTATE, Penn., 37 Atl. Rep. 1000.

164. TAXATION—Equalization by County Board.—Under section 11, art. 13, of the constitution, and section 21, subd. 15, ch. 131, Sess. Laws Utah 1896, the county board of equalization may raise or lower the valuation of the assessment of any class of property in the county for city taxes as well as for county taxes.—SALT LAKE CITY v. ARMSTRONG, Utah, 49 Pac. Rep. 641.

165. TAXATION — Shareholders in National Banks.—The statutes of Kansas in relation to taxation impose upon national banks the duty of paying the tax assessed against the shareholders therein, and authorize the treasurer of the county where the bank is situated to issue warrant therefor in case of the failure of the bank to pay.—LYMAN v. FIRST NAT. BANK OF SENECA, Kan., 49 Pac. Rep. 639.

166. TAXATION—Taxes Assessed to Tenant in Dower.—In Tennessee, taxes on land are a personal debt of the tax payer; and where the land is occupied by a tenant in dower, and the taxes are assessed to her, they are not a lien on the fee; and hence, on the failing in of the life estate of such tenant before payment or a final decree to enforce the same, the lien and taxes are lost.—STATE v. CAMPBELL, Tenn., 41 S. W. Rep. 937.

167. TAX DEED—Limitations.—A party who seeks to recover lands sold for taxes, claiming under a tax deed duly recorded, must bring his action within two years after his cause of action accrues; and where the land remains vacant for more than five years after the

tax deed is recorded, and the holder of the original title then takes and holds possession thereof for more than two years before suit is brought by the holder of he tax title, the action of the latter is barred, by the third subdivision of section 16 of the Code of Civil Procedure.—COALE v. CAMPBELL, Kan., 49 Pac. Rep. 604.

168. TAX SALE—Return of Warrant.—The return of a warrant for sale of lands for delinquent taxes, made by a collector of taxes of a borough, which return is not accompanied with a copy of the required notice of such sale, or with proof that it was published, posted, and mailed as required by law, is fatally defective.—STATE v. BOROUGH OF VINELAND, N. J., 37 Atl. Rep. 1099.

169. TENANT IN COMMON—Rights of Cotenant—Payment of Taxes. — One of several cotenants against whom all taxes are assessed, while he and the assessor supposed he was the sole owner of the land, is not entitled in a partition suit to any reimbursement for the payment of such asssessments.—O'HARA v. QUINN, R. I., 38 Atl. Rep. 7.

170. TOWNS—Bounty to Volunteers.—In an action against a town for a bounty for enlisting as a soldier, promises made by an agent of the State to plaintiff are not admissible against the town, he not being shown to have been its agent.—BOGUE v. TOWN OF MONTVILLE, Conn., 37 Atl. Rep. 1078.

171. USURY — When Purged.—The fact that on the renewal of the usurious notes the principal appears as the indorser, or that there are additional or different makers or indorsers than said principal, or that notes are surrendered for drafts, will not relieve any of such notes or drafts of the taint of usury, where there is in fact the same principal through all the transactions.—MATHEWS' ADMR. v. TRADERS' BANK, Va., 27 S. E. Rep. 609.

172. VENDOR AND PURCHASER—Breach of Contract — A petition by a vendor against the vendee for breach of the contract to purchase set out in the first count a written contract, which was not within the statute of frauds, and mistakes which were claimed to exist in it, and asked for $1,500 liquidated damages provided for therein: Held, that if such writing, by mistake, failed to embody the whole of the contract, it could have been reformed, and the court properly sustained a demurrer to a second count, which declared on a verbal contract, substantially the same as the first, except that it stated various other grounds of damage.—JACKSON v. MARTIN, Tex., 41 S. W. Rep. 837.

173. WATERS — Condemnation of Water Rights.—Defendant, as a riparian owner on two brooks, to a point below their junction, and of the land lying between them, and having an ice pond on the smaller brook, had a right to connect them by a canal, in order to feed his ice pond from the larger brook in case the natural inflow was at any time insufficient. A city condemned the right to all the waters of the larger brook for the use of its inhabitants, and compensation was awarded to defendant therefor: Held, that defendant's rights in the waters of the smaller brook, with respect to the reasonable rights of other riparian proprietors below him, were in no manner affected by such appropriation of the waters of the larger brook and he was entitled to no compensation for any consequential damages he may suffer should his obstruction of the flow of the smaller brook to fill his ice pond infringe the rights of the riparian owners on the larger brook below the junction.—NEW LONDON WATER BOARD v. PERRY, Conn., 37 Atl. Rep. 1059.

174. WATERS — Natural Water Courses — Riparian Rights.—Each riparian owner is entitled to the natural flow of the stream through his land, with the limitation that the superior proprietor may take therefrom such an amount as he is entitled to for riparian purposes; but such superior proprietor cannot, as against an inferior proprietor, divert to non-riparian lands the water which he would have a right to use for riparian purposes, but which he does not in fact use, since his riparian right is appurtenant to the land bordering on the stream.—GOULD v. GLEASON, Cal., 49 Pac. Rep. 577.

175. WATERS—Riparian Rights — Diversion of Water. —A city for many years appropriated about one-half of the volume of a river, the use of the waters of which belonged to plaintiffs, who were riparian owners and mill proprietors. The greater part of the water was returned to the river in the form of sewage, so that plaintiffs sustained no substantial damages. The city thereafter, for the purpose of abating the nuisance caused by such sewage, built a sewer, diverting it from such stream: Held, that as the city, under its charter, had the right to dispose of its sewage as it saw fit, a bill by plaintiffs to enjoin it from so diverting "the sewage" would not lie whether the city had or had not the right, as against plaintiffs, to take and use the water.—FISK v. CITY OF HARTFORD, Conn., 37 Atl. Rep. 983.

176. WILLS—Contingent Remainders.—A remainder is contingent when it is so limited as to take effect to a person not *in esse*, or not ascertained, or upon an event which may never happen, or may not happen until after the determination of the particular estate. It is contingent if it depends upon the happening of a contingent event, whether the estate limited as a remainder shall ever take effect at all.—ROBINSON v. PALMER, Me., 38 Atl. Rep. 103.

177. WILLS—Contingent and Vested Remainders.—Under a will devising testator's plantation to his wife for life, the property to remain in its present condition during that period, and after her death "to be equally divided among my children that may be alive at that time," etc., the children take contingent remainders.—NICHOLSON v. COUSAR, S. Car., 27 S. E. Rep. 628.

178. WILLS—Estate Devised.—The last will of a father, executed before the abrogation of estates by joint tenancy by the act of 1891, which reads: "I bequeath to my son, Thomas, the sum of one dollar, and to Amanda Anne, wife of my son, Thomas, and her children, I bequeath the Fisher farm,"—will be construed to create a joint tenancy in the mother and children, and to evidence an intent to exclude the son from any inheritable interest in the land under the statute of descents, as the heir of the wife or children, there being no other words in the will from which a different intent can be inferred. — NOBLE v. TEEPLE, Kan., 49 Pac. Rep. 598.

179. WILLS — Nature of Estate Devised.—A devise of the "real estate" derived by testatrix from her deceased son does not include land purchased by her at foreclosure of mortgages bequeathed to her by the son. —COLES v. COLES, N. J., 37 Atl. Rep. 1025.

180. WITNESS — Credibility. — An instruction that, in the absence of motive and willful intent to deceive, by testifying falsely to a material fact known at the time to be absolutely false, discrepancies, though material, should be attributed to mistake, and the maxim, "False in one thing, false in all things," should not be applied, is not erroneous. — STATE v. SEXTON, S. Dak., 72 N. W. Rep. 84.

181. WITNESS—Impeachment—Conviction of Felony. —For the purpose of affecting the credibility of a witness produced by the plaintiffs, it is competent for the defendants to introduce an authenticated record showing a conviction for felony of a person of the same name as the witness without other proof that the person convicted was the same one who testified as a witness in the case. — BAYHA v. MUNFORD, Kan., 49 Pac. Rep. 601.

182. WITNESS — Transactions with Decedent.—In the federal courts the competency of parties or interested persons as witnesses is controlled by Rev. St. § 858, and their testimony is not to be excluded thereunder in suits by or against administrators, etc., except as to any transactions with or statements by the deceased. —DE BEAUMONT v. WEBSTER, U. S. C. C. of App., Third Circuit, 81 Fed. Rep. 535.

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CONTENTS.